

Gregory Gray, Jr.

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<p style="text-align: right;">Page 97</p> <p>1 think we should get around three to \$4 million for 2 Lineagen. 3 BY MS. KIM: 4 Q. That would be the carried interest? 5 A. That would be the carried interest, yes. 6 MR. LAWRENCE: Can I just ask a follow-up 7 question so you understand? 8 MR. RAWLINGS: Sure. 9 MR. LAWRENCE: For the investors, what 10 would the return be on Lineagen that you are 11 anticipating for them, just by a multiple of what they 12 have invested? 13 THE WITNESS: It is a dollar per share 14 they invested and a dollar per share now. 15 MR. LAWRENCE: As you project the success 16 of Lineagen, what do you anticipate it will be? 17 THE WITNESS: We hope for a \$500 million 18 exit in the next two to three years. 19 MR. LAWRENCE: Which would be how many 20 multiples of -- 21 THE WITNESS: About a 20 X return. 22 BY MR. RAWLINGS: 23 Q. What I think you are trying to get at 24 another way is the number you are giving us is the 25 5 percent carry, or is it 10 percent carry?</p>	<p style="text-align: right;">Page 99</p> <p>1 you mentioned Tony became a partner." Can you provide 2 more detail on this question and your response? 3 A. So, again, Tony Oram invested into 4 Archipel Capital. At this point in time the BIM 5 Management LP was not created, and this is me trying 6 to simplify our tax return for BIM Management, 7 because Nixon Peabody did not complete the necessary 8 forms. 9 Q. I apologize if you already answered this, 10 but when did Mr. Oram invest in Archipel Capital? 11 A. I don't recall. I don't recall. I'm 12 sorry. 13 Q. Was it before 2012? 14 A. It was either 2011 or 2012. 15 Q. For example, when BIM Management LP was 16 formed, was Mr. Oram a part of the picture? 17 A. I don't know. I can't recall. 18 So to add color, Tony Oram and Greg 19 Edwards both live in Toronto, Ontario. They both 20 know each other. It is fully open dialogue amongst 21 all of us. I just don't know the exact dates when 22 Tony was an investor. 23 Q. And they both were your clients when you 24 were at Advanced Equities? 25 A. Yes.</p>
<p style="text-align: right;">Page 98</p> <p>1 A. 10 percent carry. 2 Q. So if we say "We think it is worth 3 30 million," then 300,000 -- 300 million would go to 4 the investors? 5 A. For example, to put it in perspective, 6 for rough numbers we have basically a \$2 million 7 investment in Lineagen. We think, again -- our 8 internal projections -- 20 X return would put that at 9 \$40 million minus 2 percent original investment is 10 \$38 million in profit. 10 percent of that is 11 \$3.8 million. 12 Q. That is helpful. Thank you. 13 A. Rough numbers. 14 Q. Rough numbers and not realized at all? I 15 mean, that is another thing that BIM has, but that is 16 just -- 17 A. Right. But, again, that is where we used 18 our valuation in the marketplace to help drive that 19 valuation to get closer to that exit. 20 Q. Understood. 21 BY MS. KIM: 22 Q. So returning back to Exhibit 5, the same 23 page there is a mention here of Tony. It says -- this 24 is Mr. Byles-Smit writing -- he writes "Per your 25 discussion with Bill at some point over the six months</p>	<p style="text-align: right;">Page 100</p> <p>1 Q. Is there a relationship between Mr. Oram 2 and Mr. Edwards? 3 A. Yes. 4 Q. What is that apart from Archipel Capital? 5 A. Apart from Archipel Capital? They are 6 respectful, they are very cordial to one another, 7 respect each other. Different generations, though. 8 Q. Did they have a business relationship? 9 A. Outside of Archipel? No. They may have 10 shared an investment together. Let me clarify that. 11 They were in investments together. I don't know if 12 that matters, but they were in investments together. 13 Q. What does that mean, they were in 14 investments together? 15 A. At Advanced Equities, they created an 16 investment vehicle to invest in our deal flow, in our 17 deals, and they created the equivalent of an LLC in 18 Toronto. I don't remember what it is called. They 19 would invest in that LLC to invest in our deal flow. 20 Q. Did Mr. Oram and Mr. Edwards create the 21 LLC in Toronto to invest in Advanced Equities deal 22 flow? 23 A. I don't know who created the LLC, but it 24 wasn't just Edwards and Oram. It was a group of 15 25 investors.</p>

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<p>1 Q. At BIM Management, do you have a title?</p> <p>2 A. General partner.</p> <p>3 Q. And is Mr. Edwards also a general partner?</p> <p>4 A. Yes.</p> <p>5 Q. And Mr. Oram?</p> <p>6 A. Technically, I don't even know if Tony</p> <p>7 Oram is a part of BIM Management right now legally,</p> <p>8 because, again, the incomplete docs so he does not</p> <p>9 have a title in my eyes that I am aware of.</p> <p>10 Q. But with the incomplete docs, does that</p> <p>11 also mean Mr. Edwards doesn't have a title?</p> <p>12 A. No. Because when the docs were created</p> <p>13 by Nixon, even incomplete, they put our biographies</p> <p>14 as the general partner in BIM Management.</p> <p>15 Q. Does BIM Management have employees?</p> <p>16 A. No.</p> <p>17 Q. And I know you had mentioned a number of</p> <p>18 people like Mr. Russo, Mr. McMahon, who helped bring</p> <p>19 investors to the Archipel offerings. Are those</p> <p>20 people -- do they have a relationship with BIM</p> <p>21 Management?</p> <p>22 A. Yes.</p> <p>23 Q. What is that relationship?</p> <p>24 A. Well, ultimately BIM Management receives</p> <p>25 the 5 percent management fee, and then BIM pays the</p>	<p>1 Q. Was he separately an investor in Social</p> <p>2 Media Fund?</p> <p>3 A. Tony was not, no.</p> <p>4 Q. Was Mr. Edwards?</p> <p>5 A. No.</p> <p>6 Q. Were you?</p> <p>7 A. In Social Media Fund? No, outside the</p> <p>8 carried interest, no.</p> <p>9 Q. So Mr. Oram has received carried interest</p> <p>10 in connection with the Social Media Fund in 2014. Did</p> <p>11 he receive any compensation from BIM Management before</p> <p>12 2014?</p> <p>13 A. No.</p> <p>14 Q. I would like to ask a few questions about</p> <p>15 Bennington Investment Management Incorporated.</p> <p>16 A. Okay.</p> <p>17 Q. What is that?</p> <p>18 A. It was an equivalent of a Canadian broker</p> <p>19 dealer, Ontario broker dealer.</p> <p>20 Q. When you said it was the equivalent of a</p> <p>21 Canadian broker dealer, what do you mean by was?</p> <p>22 A. It is no longer in existence.</p> <p>23 Q. Does it do any business at all presently?</p> <p>24 A. No.</p> <p>25 Q. When did it -- you said it is no longer in</p>
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<p>1 advisors accordingly.</p> <p>2 Q. How much money did you receive in 2014</p> <p>3 from BIM Management, from your ownership interest in</p> <p>4 BIM Management?</p> <p>5 A. I don't know unless it is on here.</p> <p>6 Q. Do you know approximately?</p> <p>7 A. 2014? I don't know. I'm sorry.</p> <p>8 Q. Do you know how much money you received</p> <p>9 from BIM Management in any years before 2014?</p> <p>10 A. I can't recall. I'm sorry.</p> <p>11 Q. Has Mr. Edwards ever been compensated by</p> <p>12 BIM Management?</p> <p>13 A. He has carried interest in Social Media</p> <p>14 Funds.</p> <p>15 Q. And that was in 2014?</p> <p>16 A. Yes.</p> <p>17 Q. And before 2014 was he compensated by BIM</p> <p>18 Management at all?</p> <p>19 A. Not to my knowledge, no.</p> <p>20 Q. Was Mr. Oram compensated by BIM</p> <p>21 Management?</p> <p>22 A. Just his ownership in Social Media Fund.</p> <p>23 Q. And that is -- sorry. When you say the</p> <p>24 ownership in Social Media Fund, does that mean --</p> <p>25 A. Carried interest.</p>	<p>1 existence since when?</p> <p>2 A. I don't know. You would have to ask Greg</p> <p>3 Edwards. I don't know.</p> <p>4 Q. Was Mr. Edwards a principal of Bennington</p> <p>5 Investment Management?</p> <p>6 A. I believe he was the sole owner.</p> <p>7 Q. Did you have any relationship with</p> <p>8 Bennington Investment Management?</p> <p>9 A. Outside of helping with deal flow, no.</p> <p>10 Q. And what was helping with deal flow?</p> <p>11 A. Analyzing venture capital offerings.</p> <p>12 Q. Did you analyze venture capital offerings</p> <p>13 on behalf of Bennington Investment Management?</p> <p>14 A. I think it would be more in conjunction</p> <p>15 with Archipel.</p> <p>16 MR. RAWLINGS: Off the record for a quick</p> <p>17 second.</p> <p>18 VIDEOGRAPHER: We are now off the record.</p> <p>19 The time on the video monitor is 12:58 p.m.</p> <p>20 (Discussion off the record.)</p> <p>21 VIDEOGRAPHER: We are on the record. The</p> <p>22 time on the video monitor is 12:59 p.m.</p> <p>23 We are now off the record. The time on</p> <p>24 the video monitor is 12:59 p.m.</p> <p>25 (A luncheon recess was taken.)</p>

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<p>1 advisors accordingly.</p> <p>2 Q. How much money did you receive in 2014</p> <p>3 from BIM Management, from your ownership interest in</p> <p>4 BIM Management?</p> <p>5 A. I don't know unless it is on here.</p> <p>6 Q. Do you know approximately?</p> <p>7 A. 2014? I don't know. I'm sorry.</p> <p>8 Q. Do you know how much money you received</p> <p>9 from BIM Management in any years before 2014?</p> <p>10 A. I can't recall. I'm sorry.</p> <p>11 Q. Has Mr. Edwards ever been compensated by</p> <p>12 BIM Management?</p> <p>13 A. He has carried interest in Social Media</p> <p>14 Funds.</p> <p>15 Q. And that was in 2014?</p> <p>16 A. Yes.</p> <p>17 Q. And before 2014 was he compensated by BIM</p> <p>18 Management at all?</p> <p>19 A. Not to my knowledge, no.</p> <p>20 Q. Was Mr. Oram compensated by BIM</p> <p>21 Management?</p> <p>22 A. Just his ownership in Social Media Fund.</p> <p>23 Q. And that is -- sorry. When you say the</p> <p>24 ownership in Social Media Fund, does that mean --</p> <p>25 A. Carried interest.</p>	<p>1 existence since when?</p> <p>2 A. I don't know. You would have to ask Greg</p> <p>3 Edwards. I don't know.</p> <p>4 Q. Was Mr. Edwards a principal of Bennington</p> <p>5 Investment Management?</p> <p>6 A. I believe he was the sole owner.</p> <p>7 Q. Did you have any relationship with</p> <p>8 Bennington Investment Management?</p> <p>9 A. Outside of helping with deal flow, no.</p> <p>10 Q. And what was helping with deal flow?</p> <p>11 A. Analyzing venture capital offerings.</p> <p>12 Q. Did you analyze venture capital offerings</p> <p>13 on behalf of Bennington Investment Management?</p> <p>14 A. I think it would be more in conjunction</p> <p>15 with Archipel.</p> <p>16 MR. RAWLINGS: Off the record for a quick</p> <p>17 second.</p> <p>18 VIDEOGRAPHER: We are now off the record.</p> <p>19 The time on the video monitor is 12:58 p.m.</p> <p>20 (Discussion off the record.)</p> <p>21 VIDEOGRAPHER: We are on the record. The</p> <p>22 time on the video monitor is 12:59 p.m.</p> <p>23 We are now off the record. The time on</p> <p>24 the video monitor is 12:59 p.m.</p> <p>25 (A luncheon recess was taken.)</p>

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<p>1 (Archipel Capital PPMs premarked 2 Exhibit 6.) 3 VIDEOGRAPHER: We are now on the record. 4 The time on the video monitor is 1:45 p.m. 5 Q. Mr. Gray, before the break you had 6 mentioned something Nixon Peabody addressed, a 7 partnership agreement that you had put together with 8 Mr. Edwards and Mr. Oram for, I think, BIM Management 9 LP; is that right? 10 A. Yes. 11 Q. Have you produced a copy of that draft 12 partnership agreement? 13 A. It was in my email. I don't know if it 14 has been produced other than you giving access -- in 15 my email documents to you. I'm not sure where we are 16 in that process. 17 MS. KIM: So we would request a copy of 18 this document from counsel. 19 Q. Mr. Gray, earlier you were discussing when 20 we were talking about the Background Questionnaire, 21 you mentioned an action, a disciplinary action by 22 NASD/FINRA which became a New York Stock Exchange 23 action; is that correct? 24 A. To my knowledge, yes. 25 Q. Can you describe that action?</p>	<p>1 unauthorized trading? 2 A. With regard to the Exchange matter? 3 Q. So there were two customers that you -- 4 there were allegations relating to unauthorized 5 trading with two customers; is that correct? 6 A. The initial allegation was probably 15 7 customers back in 2003. 8 Q. And what happened with those other 13 9 customers? 10 A. They all got dismissed. 11 Q. Can you explain what happened there? 12 A. So my firm at the time, Quick &amp; Reilly, 13 was acquired by -- we were owned by Fleet Boston. 14 Bank of America bought out Fleet Boston which owned 15 Quick &amp; Reilly. We were not offered -- the brokers 16 were not offered a retention bonus to stay at Quick &amp; 17 Reilly. 18 A group of us decided we were going to go 19 to a different firm. Our branch manager made a 20 threat to us that if we left he would mark up our U5. 21 We left anyway, and he put -- our branch manager put 22 false information on our form U5 when we left the 23 firm. 24 Q. The Commission sustained findings by the 25 New York Stock Exchange that you had done unauthorized</p>
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<p>1 A. The action was regulatory governing body 2 for potential unauthorized trades in customer 3 accounts. 4 Q. Were there any other -- was the 5 investigation purely for unauthorized trading are? 6 A. I think it was also that, and interaction 7 with customers. It depends on which investigation 8 you are referring to, because FINRA -- the NASD, the 9 FINRA and NYSE, they are all different members and 10 different people. 11 Q. So the action that ultimately went up to 12 appeal with Commission, that related to unauthorized 13 trading and also harassment of customers, correct? 14 A. Yes. 15 Q. And you had done unauthorized trading in 16 customer accounts? 17 A. That's what the allegations were. 18 Q. Is that not true? 19 A. I admitted to one unauthorized trade with 20 my employer at that time in 2003, and my employer was 21 aware of it, and my employer gave me a letter of 22 don't do it again reprimand. 23 Q. And who was that employer? 24 A. Quick &amp; Reilly. 25 Q. And there was a second allegation of</p>	<p>1 trading in two customer accounts? 2 A. Yes. 3 Q. There were also allegations relating to 4 interactions with customers, you said? 5 A. Yes. 6 Q. Can you describe those? 7 A. I had phone conversations with Harold 8 Sharp and a Mr. Wierzbicki, W-I-E-R-Z-B-I-E-C-K-I. 9 Q. What were the phone conversations with 10 Mr. Sharp? 11 A. Mr. Sharp was a house account, a 12 designated house account at H&amp;R Block which got put 13 into my rep number at H&amp;R Block. 14 He called the customer service, 800 15 customer service number, to make a complaint about 16 getting -- he didn't get a statement, or something to 17 that effect. 18 And since my registered rep number was 19 attached to his account, I got flagged with a 20 customer complaint, even though I had never had any 21 interaction, communication with this client ever. 22 Q. Did you have interactions or 23 communications with Mr. Sharp after you were flagged 24 for the complaint? 25 A. Yes.</p>

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<p style="text-align: right;">Page 109</p> <p>1 Q. Can you go into those?</p> <p>2 A. I contacted Mr. Sharp about his complaint</p> <p>3 so he would try to clarify his complaint was with the</p> <p>4 investor center and the firm and not against me,</p> <p>5 because I never met him, spoke to him, had any</p> <p>6 communication with him whatsoever.</p> <p>7 Q. How many times did you speak with</p> <p>8 Mr. Sharp?</p> <p>9 MR. LAWRENCE: I'm sorry, counsel. I</p> <p>10 would like to interpose an objection, maybe see if</p> <p>11 there is some way we can deal with this.</p> <p>12 I am certain he gave detailed testimony in</p> <p>13 these cases so I don't know why the staff wants to go</p> <p>14 into the allegations again about it.</p> <p>15 I mean, certainly we are here to be</p> <p>16 cooperative and helpful and answer questions you have,</p> <p>17 but I am very sensitive to the fact that this witness</p> <p>18 testified about exactly what you are asking him</p> <p>19 questions about probably 10 years ago.</p> <p>20 MR. RAWLINGS: Off the record for a quick</p> <p>21 second.</p> <p>22 VIDEOGRAPHER: We are now off the record.</p> <p>23 The time on the video monitor is 1:53 p.m.</p> <p>24 (Discussion off the record.)</p> <p>25 VIDEOGRAPHER: We are now on the record.</p>	<p style="text-align: right;">Page 111</p> <p>1 Q. And when was that?</p> <p>2 A. It would have been disclosed to Nixon</p> <p>3 approximately April, May 2011.</p> <p>4 Q. And who did you tell at Nixon Peabody?</p> <p>5 A. I believe my counsel, John Koeppel.</p> <p>6 Q. Do you remember that conversation?</p> <p>7 A. Not specifically, no.</p> <p>8 Q. Did he ask about it?</p> <p>9 A. Mr. Koeppel asked us for, just more or</p> <p>10 less, our bio so he asked -- he sent an email to us</p> <p>11 asking us for our bio to put in the PPMs, and I gave</p> <p>12 him a copy of our investment presentation.</p> <p>13 Q. Did that investment presentation disclose</p> <p>14 your disciplinary history?</p> <p>15 A. That presentation did not.</p> <p>16 Q. Speaking about when you disclosed the</p> <p>17 disciplinary history to Nixon Peabody, was that done</p> <p>18 by email?</p> <p>19 A. That would have been done on the phone.</p> <p>20 Q. What prompted the disclosure?</p> <p>21 A. Well, we talked more or less about</p> <p>22 Archipel Capital, whether we needed to be a</p> <p>23 registered broker dealer, whether we didn't need to</p> <p>24 be a broker dealer, what licenses I had, what</p> <p>25 licenses I didn't have, and how best to create this</p>
<p style="text-align: right;">Page 110</p> <p>1 The time on the video monitor is 1:54 p.m.</p> <p>2 Q. Before we just broke we were speaking</p> <p>3 about the New York Stock Exchange action/SEC/NASD</p> <p>4 What discipline did you receive as a result of the</p> <p>5 action?</p> <p>6 A. Three-year censure.</p> <p>7 Q. Was there also a bar?</p> <p>8 A. Censure, bar, same thing.</p> <p>9 Q. What was the duration of the bar?</p> <p>10 A. Three years.</p> <p>11 Q. From when to when?</p> <p>12 A. February 2008 till February 2011.</p> <p>13 Q. Have you ever disclosed -- so I am going</p> <p>14 to describe this, or in shorthand I am going to call</p> <p>15 it disciplinary history.</p> <p>16 Have you ever disclosed this disciplinary</p> <p>17 history to any person?</p> <p>18 A. Any person? Sure.</p> <p>19 Q. In connection with Archipel Capital or</p> <p>20 related entities.</p> <p>21 A. Are you looking for -- can you clarify</p> <p>22 person?</p> <p>23 Q. For example, did you disclose it to Nixon</p> <p>24 Peabody?</p> <p>25 A. Yes.</p>	<p style="text-align: right;">Page 112</p> <p>1 fund structure going forward.</p> <p>2 At that point in time, my licenses were</p> <p>3 not, you know -- I was not with a firm at the point</p> <p>4 in time. We didn't want to be a broker dealer. We</p> <p>5 didn't want to do anything with stocks, bonds, funds,</p> <p>6 et cetera. We only wanted to work in the venture</p> <p>7 capital space.</p> <p>8 Q. Are these -- is that something you told</p> <p>9 Mr. Koeppel about in that time period you were</p> <p>10 mentioning, April of 2011?</p> <p>11 A. Yes.</p> <p>12 BY MR. RAWLINGS:</p> <p>13 Q. I am just curious. What was your</p> <p>14 relationship with Mr. Koeppel at that time? Were you</p> <p>15 new acquaintances because you had recently become</p> <p>16 affiliated, or had you known him for some time?</p> <p>17 A. Both. So in 2008 Greg Edwards and myself</p> <p>18 went to go meet John Koeppel at Nixon Peabody about</p> <p>19 launching an offshore fund. Due to the world</p> <p>20 economic crisis, we did not.</p> <p>21 And then we looked at reestablishing our</p> <p>22 venture fund, if you will. We looked at having a</p> <p>23 larger profile law firm in Buffalo, New York where I</p> <p>24 reside. There is really one law firm, Nixon Peabody,</p> <p>25 and we felt very comfortable with John and Nixon and</p>

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<p style="text-align: right;">Page 113</p> <p>1 his firm, and we engaged him at that time.</p> <p>2 Q. In the phone call -- I know you don't</p> <p>3 really recall exactly -- was it just you and Mr.</p> <p>4 Koeppel on the phone, or do you think there might have</p> <p>5 been others?</p> <p>6 A. No. There was one other party. I think</p> <p>7 his name was Charlie Jacobs, but I can't be certain.</p> <p>8 It was something Jacobs for sure.</p> <p>9 Q. Did you in that call have a conversation</p> <p>10 with him about whether or not the disciplinary history</p> <p>11 needed to be disclosed to investors?</p> <p>12 A. I don't recall.</p> <p>13 Q. Isn't it true at that time you were</p> <p>14 actually still subject to the bar from the Exchange?</p> <p>15 A. No.</p> <p>16 Q. No?</p> <p>17 A. I'm sorry.</p> <p>18 Q. It was a three-year bar that began when?</p> <p>19 A. February 2008.</p> <p>20 Q. So it was over in 2011?</p> <p>21 A. The bar started in February 2008 and</p> <p>22 ended in February 2011.</p> <p>23 Q. So when would you say this call at Nixon</p> <p>24 Peabody was?</p> <p>25 A. We began probably discussions with Nixon</p>	<p style="text-align: right;">Page 115</p> <p>1 Q. We will use that shortly. Since we had</p> <p>2 previously marked it I wanted to announce it for the</p> <p>3 record.</p> <p>4 MS. KIM: Exhibit 7 is, for the record, an</p> <p>5 email from Mr. Gray to Mr. Koeppel dated May 12, 2011,</p> <p>6 Bates range including an attachment is ARCHIPEL 04855</p> <p>7 through ARCHIPEL 048582.</p> <p>8 Q. Mr. Gray, do you recognize this email?</p> <p>9 A. Yes. It is an email chain between Nixon</p> <p>10 Peabody, Devin and myself.</p> <p>11 Q. And earlier you mentioned that you had</p> <p>12 sent Nixon Peabody information relating to your</p> <p>13 biography?</p> <p>14 A. Yes.</p> <p>15 Q. And is that this information, the</p> <p>16 attachment to this email?</p> <p>17 A. The attachment is here (indicating).</p> <p>18 Q. Does this contain the information, your</p> <p>19 biographical information that you provided to Nixon</p> <p>20 Peabody? Go to Bates 48577.</p> <p>21 A. That is correct.</p> <p>22 Q. It states here four bullet points down on</p> <p>23 page 48577 that you are, or it states "registered</p> <p>24 investment advisor; NASD licenses: Series 6, 7, 63,</p> <p>25 65." Am I reading that accurately?</p>
<p style="text-align: right;">Page 114</p> <p>1 in April 2011.</p> <p>2 Q. You mentioned you drafted a biography to</p> <p>3 send to Nixon Peabody, correct?</p> <p>4 A. I or one of my colleagues. Nixon Peabody</p> <p>5 asked us for our bios. We sent them a copy of a beta</p> <p>6 investment presentation that was either prepared by</p> <p>7 myself or a colleague of mine, Devin Stelljes.</p> <p>8 Q. Did they ask you to send the bio before or</p> <p>9 after the conversation you were referring to in which</p> <p>10 you orally made them aware of your disciplinary</p> <p>11 history?</p> <p>12 A. I don't recall. I am sorry.</p> <p>13 BY MS. KIM:</p> <p>14 Q. Who is Charlie Jacob?</p> <p>15 A. If it is Charlie, he was an attorney at</p> <p>16 Nixon Peabody. I believe it is Charlie, just to</p> <p>17 clarify. I can't be certain.</p> <p>18 Q. We previously marked a binder that</p> <p>19 contains all the PPMs that we have been able to find</p> <p>20 for the Archipel Capital offerings as NY-9143</p> <p>21 Exhibit 6. I am going to mark next or have the court</p> <p>22 reporter mark next NY-9143 Exhibit 7.</p> <p>23 (Email dated May 12, 2011 marked</p> <p>24 Exhibit 7.)</p> <p>25 A. Are we done with that?</p>	<p style="text-align: right;">Page 116</p> <p>1 A. Yes.</p> <p>2 Q. Did you draft this biography?</p> <p>3 A. Either myself or Devin Stelljes.</p> <p>4 Q. So you wrote that you are a registered</p> <p>5 investment advisor; is that what this page indicates?</p> <p>6 A. Yes.</p> <p>7 Q. You now know that that is incorrect?</p> <p>8 A. Yes.</p> <p>9 Q. And you testified earlier, I think,</p> <p>10 December 2014 you found that out?</p> <p>11 A. Yes.</p> <p>12 Q. Did Mr. Koeppel ask you about this</p> <p>13 biography?</p> <p>14 A. He asked me to provide a copy of the</p> <p>15 biography.</p> <p>16 Q. Do you know why he wanted to include your</p> <p>17 biography? It looks like, for example, in the initial</p> <p>18 email, the cover email, he writes "We are working on</p> <p>19 offering -- on the offering/equity docs for Bennington</p> <p>20 Everloop LP."</p> <p>21 And then he proceeds to ask for a bio</p> <p>22 from you. Do you know why he was asking for a bio</p> <p>23 from you?</p> <p>24 A. For a bio in the offering docs.</p> <p>25 Q. And bio would be biography?</p>

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<p>1 A. Yes. I'm sorry.</p> <p>2 Q. Just for the record.</p> <p>3 And do you know if that biography was</p> <p>4 included in the offering documents?</p> <p>5 A. It was.</p> <p>6 BY MR. RAWLINGS:</p> <p>7 Q. Just so we understand, this PowerPoint</p> <p>8 that you were sending to him was prepared by either</p> <p>9 you or Devin Stelljes at some time before the</p> <p>10 Bennington Everloop offering?</p> <p>11 A. I can't say for certain, but I would</p> <p>12 presume that, yes. I mean, it had to be done before.</p> <p>13 Q. Did you have any consultation with counsel</p> <p>14 in the preparation of this particular document, like</p> <p>15 page 20, as to what should or shouldn't be included in</p> <p>16 it?</p> <p>17 A. Let me make sure I understand your</p> <p>18 question. Did I speak with counsel about page 20?</p> <p>19 Q. Yes. About page 20 of the original</p> <p>20 PowerPoint presentation.</p> <p>21 A. This is page 20 (indicating)?</p> <p>22 MR. LAWRENCE: That's what he is asking.</p> <p>23 A. Other than Nixon Peabody asking for my</p> <p>24 bio, we sent them a copy of our bio.</p> <p>25 Q. I guess what I am trying to get at, at the</p>	<p>1 as the word "look." I mean, we get pitched on deals</p> <p>2 daily so you could easily say 50 to 100 deals.</p> <p>3 I mean, again, depends what your level of</p> <p>4 due diligence is. If somebody pitches me a deal, I</p> <p>5 don't really say I looked at it. Again, depending on</p> <p>6 how you categorize look, 50 or 100.</p> <p>7 Q. How many investments had Bennington</p> <p>8 Investment Management made prior to this time which</p> <p>9 is, say, in the two years leading up to the</p> <p>10 preparation of this document, which had to have been</p> <p>11 sometime around 2011?</p> <p>12 A. I can't say for certain. Low end six,</p> <p>13 high end 12.</p> <p>14 Q. Do you recall a conversation with Devin</p> <p>15 Stelljes about your disciplinary history at any time?</p> <p>16 A. The only conversation I recall, yes, was</p> <p>17 one we had when a group of Agrivida investors asked</p> <p>18 me about it off-line on a conference call.</p> <p>19 Q. And what was the conversation you had with</p> <p>20 Devin at that time?</p> <p>21 A. Devin just asked me about the regulatory</p> <p>22 history, what is my side of the events, my side of</p> <p>23 the story, and I explained it to him, and that was</p> <p>24 that.</p> <p>25 Q. Was he unaware of the regulatory history</p>
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<p>1 time when either you or Devin wrote this bio -- let me</p> <p>2 posit an issue -- It doesn't say anything about</p> <p>3 disciplinary history. I just want to know do you</p> <p>4 recall thinking subjectively to yourself when you did</p> <p>5 this bio or provided information to Stelljes on this</p> <p>6 bio thinking about whether or not that incident needed</p> <p>7 to be disclosed?</p> <p>8 A. No.</p> <p>9 Q. And do you have any recollection of</p> <p>10 getting any legal advice with respect to whether or</p> <p>11 not it should be disclosed on this document on</p> <p>12 page 20?</p> <p>13 A. No.</p> <p>14 Q. Okay. And then just quickly through, when</p> <p>15 you say member of Bennington Investment Management</p> <p>16 advisory board, we talked about that very briefly</p> <p>17 before, but what was it that you had been doing for</p> <p>18 Bennington Investment Management advisory board that</p> <p>19 this bullet refers to?</p> <p>20 A. It is more or less analyzing venture</p> <p>21 capital deal flow.</p> <p>22 Q. How many deals were there?</p> <p>23 A. That we looked at?</p> <p>24 Q. Yes.</p> <p>25 A. Again, depending on what you constitute</p>	<p>1 before that time?</p> <p>2 A. I don't know. I can't say.</p> <p>3 Q. But he said nothing to you beforehand that</p> <p>4 would have indicated he was aware of it; is that</p> <p>5 right?</p> <p>6 A. Correct.</p> <p>7 Q. And what is your best estimate as to that</p> <p>8 placement in time?</p> <p>9 A. When that conference call took place?</p> <p>10 February 2012.</p> <p>11 BY MS. KIM:</p> <p>12 Q. And are the investors -- you said it was</p> <p>13 Agrivida investors asked you about it?</p> <p>14 A. Yes.</p> <p>15 Q. Had they already invested in the Agrivida</p> <p>16 LLC at that point?</p> <p>17 A. No.</p> <p>18 Q. So they were potential investors?</p> <p>19 A. Yes, and they did invest after our</p> <p>20 conversation.</p> <p>21 Q. They did?</p> <p>22 A. Yes.</p> <p>23 BY MR. RAWLINGS:</p> <p>24 Q. Can you remember anything more about the</p> <p>25 conversation? Was this -- the conference call ends,</p>

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<p style="text-align: right;">Page 121</p> <p>1 and then Devin Stelljes asks you about what the 2 investors -- that information they brought to your 3 attention? Is that how the conversation went with 4 Devin? 5 A. I can't recall for certain. The client 6 in question was a gentleman named Jack Berrin. Jack 7 says "There is something I would like to discuss with 8 you." 9 Jack was kind of the leader, if you will, 10 of the conference call. There were about three guys 11 on the call including Devin and myself. 12 And then at length Jack, Arunis, 13 A-R-U-N-I-S, last name Chesnois, C-H-E-S-N-O-I-S, we 14 discussed the SEC censure, and I don't recall Devin 15 and I -- I don't remember Devin and I's conversation 16 after that. 17 Q. Just to be clear, you don't remember it in 18 detail, but you recall that he did ask you about it 19 afterwards, correct? 20 A. Yes. 21 BY MS. KIM: 22 Q. And the people had who were on that call, 23 you said it was Mr. Berrin, Mr. Chesnois. Was there 24 anybody else apart from you and Mr. Stelljes? 25 A. There was one other party, but I can't</p>	<p style="text-align: right;">Page 123</p> <p>1 of time. 2 Q. So as of this date, which was May 2011, 3 you were still a member of its advisory board? 4 A. Yes. 5 Q. But after in 2012 were you still a member 6 of the advisory board for Bennington Investment 7 Management? 8 A. I believe 2012 was the last year of 9 existence for -- whenever Bennington Investment 10 Management didn't do anything anymore, that was the 11 last year I was part of that, and I believe that was 12 2012. 13 Q. And who else was on this board? 14 A. It was just Greg and I, Greg Edwards. 15 Q. Did an attorney help you draft the 16 attachment to Exhibit 7? 17 MR. LAWRENCE: I object to the foundation 18 on that. To be fair, he has already told you he is 19 not familiar with whether he drafted it or not. 20 MS. KIM: I apologize. 21 Q. Do you know, was an attorney involved in 22 drafting the attachment to Exhibit 7? So, for 23 example, if you go to the last page, it contains a 24 notice. 25 A. I can't say for certain, but to the best</p>
<p style="text-align: right;">Page 122</p> <p>1 remember his name. 2 Q. But the third party was also an Agrivida 3 LLC investor? 4 A. Arunis and Jack were investors, and the 5 other gentleman, I can't say for certain. I don't 6 remember who the person was. I don't want to 7 misstate. 8 Q. Did Mr. Stelljes ever ask you -- after 9 that conversation, did he ask you for more information 10 relating to the disciplinary history? 11 A. I can't say for certain. Devin and I had 12 known each other for years, since high school, but I 13 can't say for certain. 14 Q. Did he ask you to include it -- did Mr. 15 Stelljes ask you to include your disciplinary history 16 in any documents going out to investors? 17 A. No, not that I recall. 18 Q. I am going back to something Mr. Rawlings 19 asked you about in your biography. It says here you 20 are a member of Bennington Investment Management 21 advisory board. When did you join the advisory board? 22 A. So I would probably say 2010 through 23 2011. 24 Bennington Investment Management was only 25 in existence for a two-year -- maybe two-year period</p>	<p style="text-align: right;">Page 124</p> <p>1 of my knowledge I don't believe we have used an 2 attorney. This is actually a beta version so the 3 actual version you see in front of us I don't think 4 was actually even shown to clients. I could be 5 wrong. 6 To the best of my knowledge, it was a 7 beta version that we used for internal purposes only. 8 Q. Do you know who drafted this last page? 9 A. I don't. 10 Q. Have you ever disclosed your disciplinary 11 history to any investor with an Archipel Capital 12 investment unprompted? 13 A. "Unprompted" meaning -- 14 Q. You tell them before they ask you about 15 it. 16 A. Yes. 17 Q. Who are these -- who -- can you name the 18 investors? 19 A. Our Late Stage Fund investors, our 20 Archipel Capital-Late Stage Fund LP investors. 21 BY MR. RAWLINGS: 22 Q. Just a question. In the conversation with 23 the Agrivida investors when they brought it up, do you 24 know how they became aware of it? 25 A. I am not trying to hide it. I mean, it</p>

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<p style="text-align: right;">Page 125</p> <p>1 is something I disagree with, but if you Google</p> <p>2 search my name, it's there. My investors are very</p> <p>3 sophisticated, they are very technologically savvy,</p> <p>4 and they do their due diligence on me, and our firm,</p> <p>5 we do on them. To this day it is still there.</p> <p>6 Q. Did the investor -- I know you testified</p> <p>7 previously who it was who raised it -- did he</p> <p>8 specifically say he conducted a Google search and saw</p> <p>9 it online?</p> <p>10 A. Yes.</p> <p>11 Q. Did he say at that time that he wished you</p> <p>12 had told him that before he invested?</p> <p>13 A. It was disclosed to him before he</p> <p>14 invested.</p> <p>15 Q. Sorry. Right. Of course. I apologize.</p> <p>16 Thank you.</p> <p>17 BY MS. KIM:</p> <p>18 Q. Are there investors who invested without</p> <p>19 knowing about your disciplinary history?</p> <p>20 A. I don't know.</p> <p>21 Q. Have investors told you that they were</p> <p>22 unaware of your disciplinary history before they</p> <p>23 invested with an Archipel Capital investment?</p> <p>24 A. I can't recall.</p> <p>25 Q. And you said you have disclosed your</p>	<p style="text-align: right;">Page 127</p> <p>1 decision to disclose it in the Late Stage Fund?</p> <p>2 A. So in -- I can --</p> <p>3 MR. LAWRENCE: Absolutely.</p> <p>4 A. In approximately May 2014, I got an email</p> <p>5 from John Koepfel asking me to look at certain things</p> <p>6 in our PPM. The bio was one, and he wanted to add a</p> <p>7 statement, if you will, regarding my past SEC</p> <p>8 regulatory history.</p> <p>9 Q. This was in an email to you or just a</p> <p>10 phone conversation?</p> <p>11 A. This was an email to me. Was there</p> <p>12 something else I missed or no?</p> <p>13 Q. So that is -- that was in May 2014?</p> <p>14 A. Yes.</p> <p>15 Q. And then the Late Stage Fund PPM came out</p> <p>16 when?</p> <p>17 A. June 2014, approximately.</p> <p>18 Q. Was there any -- did he discuss with you</p> <p>19 why he thought he wanted to change the bio and the</p> <p>20 PPM?</p> <p>21 A. His rationale to me was that he wanted to</p> <p>22 get in front of -- get in front of the issue.</p> <p>23 Again, all of our investors doing their</p> <p>24 due diligence on me know about it. I paid my time.</p> <p>25 It is something I am fully aware of. I can't hide it</p>
<p style="text-align: right;">Page 126</p> <p>1 disciplinary history to the Late Stage Fund investors,</p> <p>2 you know, without them asking about it first. Are</p> <p>3 there any other investors you disclosed your history</p> <p>4 to without that investor asking about it first?</p> <p>5 A. I can't recall anybody specifically.</p> <p>6 Q. For the Late Stage Fund LP investors, how</p> <p>7 did you disclose your disciplinary history to them?</p> <p>8 A. Nixon Peabody disclosed it in our private</p> <p>9 placement memorandum.</p> <p>10 Q. Did any of those Late Stage Fund LP</p> <p>11 investors ask you about your disclosure in the private</p> <p>12 placement memorandum?</p> <p>13 A. A couple of them did, yes.</p> <p>14 Q. Do you know who?</p> <p>15 A. One or two, because I was on a</p> <p>16 simultaneous conference call. I believe it was</p> <p>17 Michael Foonberg, but I can't -- F-O-O-N-B-E-R-G, but</p> <p>18 I can't be for certain.</p> <p>19 Q. Has any potential investor refused to</p> <p>20 invest because of your disciplinary history?</p> <p>21 A. Not to my knowledge.</p> <p>22 BY MR. RAWLINGS:</p> <p>23 Q. Because we think this would be subject to</p> <p>24 the waiver we discussed, can you describe your</p> <p>25 conversations with Nixon Peabody that led to the</p>	<p style="text-align: right;">Page 128</p> <p>1 and I want to move on, but it is something that he</p> <p>2 and the firm wanted to get ahead of and disclose it</p> <p>3 in the documents.</p> <p>4 Q. And he relayed that to you. Do you think</p> <p>5 he put that for justification to get ahead of it in</p> <p>6 the email, or was that orally in the conversation?</p> <p>7 A. I would probably say a phone</p> <p>8 conversation, but I can't be certain.</p> <p>9 Q. Do you recall if there was any discussion</p> <p>10 about supplementing the previous PPMs to include that</p> <p>11 information?</p> <p>12 A. I have had that conversation --</p> <p>13 MR. LAWRENCE: If you have had that</p> <p>14 conversation with anyone other than Nixon Peabody and</p> <p>15 in connection with remedial efforts that one might</p> <p>16 take, then we are claiming privilege on that, because</p> <p>17 the waiver is a limited waiver.</p> <p>18 MR. RAWLINGS: Understood.</p> <p>19 MR. LAWRENCE: To the extent you had these</p> <p>20 discussions in May of 2014 or before this</p> <p>21 investigation began I think is probably a good</p> <p>22 starting point, and backwards, if you can answer the</p> <p>23 question for that period, but for a subsequent period</p> <p>24 we are going to claim privilege for communications</p> <p>25 with attorneys about that, okay?</p>

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<p style="text-align: right;">Page 129</p> <p>1 THE WITNESS: Okay.</p> <p>2 So we have never had that discussion with</p> <p>3 Nixon.</p> <p>4 Q. When you say "that discussion," a</p> <p>5 discussion about supplementing the previously issued</p> <p>6 PPMs to include information about the disciplinary</p> <p>7 history?</p> <p>8 A. For example, Bloom Energy has been open</p> <p>9 for a period of time, and so we haven't had any</p> <p>10 discussions regarding Bloom Energy, Lineagen LP, and</p> <p>11 so on and so forth.</p> <p>12 Q. You said there were no discussions. I</p> <p>13 just want to make sure. You did not raise that with</p> <p>14 him? When he gave the suggestion or the advice or the</p> <p>15 solution "We should get out in front of this and put</p> <p>16 this information in your biography," did you say to</p> <p>17 him "Well, what about these other offerings?"</p> <p>18 A. I can't recall.</p> <p>19 Q. Do you recall if he said something about</p> <p>20 the other offerings, about wanting not to supplement</p> <p>21 the other offerings?</p> <p>22 A. I believe he said "I don't think there's</p> <p>23 a reason to rock the boat," but I can't say for</p> <p>24 certain.</p> <p>25 BY MS. KIM:</p>	<p style="text-align: right;">Page 131</p> <p>1 bios; is that right?</p> <p>2 A. Yes.</p> <p>3 Q. And then also risk factors?</p> <p>4 A. Yes.</p> <p>5 Q. And he writes, Mr. Koepfel writes, "As</p> <p>6 previously discussed, we added a new risk factor on</p> <p>7 page 7 called prior securities violation."</p> <p>8 Did I read that correctly?</p> <p>9 A. Yes.</p> <p>10 Q. Do you remember a previous discussion with</p> <p>11 Mr. Koepfel about this risk factor?</p> <p>12 A. Yes.</p> <p>13 Q. And is that the discussion you described</p> <p>14 to Mr. Rawlings?</p> <p>15 A. Yes.</p> <p>16 Q. If you go to the page Bates stamped 49066</p> <p>17 of Exhibit 8, this is a page that lists -- it is</p> <p>18 titled General Partner Management and provides</p> <p>19 biographical information for Mr. Edwards, you and</p> <p>20 Mr. LaSalle; is that correct?</p> <p>21 A. Yes.</p> <p>22 Q. And here it states -- there is a statement</p> <p>23 here under your name -- "He is also an advisory board</p> <p>24 member of Bennington Investment Management Inc."</p> <p>25 At this time in May 2014, were you an</p>
<p style="text-align: right;">Page 130</p> <p>1 Q. Did he ask you in the May 2014 time frame,</p> <p>2 did Mr. Koepfel ask you to change your bio in the PPM</p> <p>3 for the Late Stage Fund LP?</p> <p>4 A. He asked me to review -- he gave me a</p> <p>5 laundry list of four or five items to review.</p> <p>6 MR. LAWRENCE: We provided that email that</p> <p>7 he is referring to.</p> <p>8 MS. KIM: I ask the court reporter to</p> <p>9 mark.</p> <p>10 (Email dated May 12th, 2014 marked</p> <p>11 Exhibit 8.)</p> <p>12 MS. KIM: For the record, this is NY-9143</p> <p>13 Exhibit 8, an email from Mr. Koepfel to Mr. Gray dated</p> <p>14 May 12th, 2014, Bates ARCHIPEL 049057 through 9081</p> <p>15 It is an email and an attachment.</p> <p>16 Q. Mr. Koepfel -- do you recognize this</p> <p>17 email?</p> <p>18 MS. KIM: Strike that.</p> <p>19 Q. Do you recognize this email?</p> <p>20 A. Yes.</p> <p>21 Q. Can you explain what this is?</p> <p>22 A. This is an email from my counsel, John</p> <p>23 Koepfel, at Nixon Peabody to myself asking to review</p> <p>24 items in the PPM, private placement memorandum.</p> <p>25 Q. And he asked you to review the management</p>	<p style="text-align: right;">Page 132</p> <p>1 advisory board member of Bennington Investment</p> <p>2 Management Inc.?</p> <p>3 A. I am sorry. Can you repeat the question?</p> <p>4 I just -- I guess I have a concern that -- I'm sorry.</p> <p>5 Can you repeat the question?</p> <p>6 Q. As of May 2014, were you an advisory board</p> <p>7 member of Bennington Investment Management</p> <p>8 Incorporated?</p> <p>9 A. Yes.</p> <p>10 Q. And Bennington Investment Management</p> <p>11 Incorporated is the entity that had stopped operating</p> <p>12 in 2012?</p> <p>13 A. Okay. Well, so BIM Management. Can you</p> <p>14 ask your previous question again? I'm sorry.</p> <p>15 You kind of threw me off guard, because</p> <p>16 this bio isn't the one in Late Stage Fund. That's</p> <p>17 why I am confused --</p> <p>18 Q. This appears to be an earlier draft that</p> <p>19 Mr. Koepfel sent to you.</p> <p>20 A. Sorry. Can you repeat the -- about the</p> <p>21 Bennington --</p> <p>22 MR. LAWRENCE: Just so we can reset too,</p> <p>23 just try to answer questions that she has relating to</p> <p>24 this document, and I think you are trying to jump</p> <p>25 ahead maybe in your mind, which is a normal and</p>

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<p>1 natural human discussion besides attorneys and 2 testimony -- no offense to anybody in this room -- but 3 focus on this document, please. 4 THE WITNESS: Sorry. 5 Q. So as of this date, were you an advisory 6 board member of Bennington Investment Management 7 Incorporated? 8 A. No. 9 Q. Was that line included in the private 10 placement memorandum that was provided to Late Stage 11 Fund investors? 12 A. I don't believe this version was ever 13 sent to Late Stage Fund investors. 14 Q. Why don't we look at tab 11 of what we 15 labeled as Exhibit 6. If you go to the General 16 Partner page on this document. 17 MS. KIM: Just for the record, the 18 document is called Confidential Private Placement 19 Memorandum May 2014, Archipel Capital-Late Stage Fund 20 LP. 21 Q. If you are on page 5 of the document which 22 has the Bates MP-SEC-0000713, this has a bio for you; 23 is that correct? 24 A. Yes. 25 Q. And is this the final bio that went out to</p>	<p>1 BY MR. RAWLINGS: 2 Q. Who was the investor in those investments? 3 A. Greg Edwards. 4 Q. Greg Edwards. So the investor was not 5 Bennington Investment Management? 6 A. So it would be either Greg Edwards 7 personally. Sometimes Canadian law, Ontario 8 securities laws are tricky so sometimes he would do 9 Edboro Software, is an entity he owns, he created 10 Bennington Investment Management so he could do 11 options trading and venture capital offerings. 12 Sometimes it was just himself personally. It just 13 depends on how Greg decided best to do it. 14 BY MS. KIM: 15 Q. So you see in Exhibit 8 on the bio page 16 your bio states "Mr. Gray is a registered investment 17 advisor for NASD licenses, Series 6, 7, 63 and 65." 18 A. Yes. 19 Q. And does that line appear -- 20 MS. KIM: Strike that. 21 Q. That line is not in the tab 11 of 22 Exhibit 6, which is the PPM that went to investors of 23 Late Stage Fund LP, correct? 24 A. Correct. 25 Q. Why was that changed?</p>
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<p>1 investors of the Late Stage Fund Limited Partnership? 2 A. My guess is yes. I can't say for 3 certain. 4 Q. It might be easier to have this tab 11 of 5 Exhibit 6 up while we look at Exhibit 8, which I 6 believe you put -- 7 A. Okay. 8 Q. So tab 11, it still contains the language 9 that you are an advisory board member of Bennington 10 Investment Management Incorporated; is that correct? 11 A. Yes. 12 Q. And that was not true at the time? 13 A. Bennington Investment Management was 14 particularly Just Greg Edwards and myself so the deal 15 flows, the deals, the offerings that Mr. Edwards had 16 made during that period of time were still open so we 17 still advised him on his investments during that 18 offering. 19 Q. You testified earlier, though, that you 20 were no longer an advisory board member as of 2012? 21 A. The entity in which Bennington Investment 22 Management I believe concluded business, either in 23 2012 or 2013, but the investments that were made were 24 still open and are still open so we still have a 25 responsibility to monitor those investments.</p>	<p>1 A. NASD was no longer in existence so we 2 updated the NASD to the proper terminology, FINRA. 3 That statement in number 8 was a typo in a sense you 4 cannot be a registered investment advisor for NASD. 5 That is just grammatically incorrect, a typo. 6 Lastly, I thought the registered 7 investment advisor is just too confusing for our 8 investors. Again, we are a venture capital firm. 9 That's all we do. I don't want to be known as 10 someone who advises people on stocks, bonds, funds, 11 munis, et cetera, so I took it out. 12 VIDEOGRAPHER: We are now off the record. 13 The time on the individual monitor is 2:33 p.m. 14 (Discussion off the record.) 15 VIDEOGRAPHER: We are now on the record. 16 The time on the video monitor is 2:40 p.m. 17 Q. Mr. Gray, I wanted to go back through a 18 little bit of the timeline. Around the May 2011 time 19 period, Nixon Peabody is putting together offering 20 documents for the Everloop LP deal; is that right? 21 A. Yes. 22 Q. And around that time you disclosed to them 23 about your disciplinary history? 24 A. Yes. 25 Q. You disclosed to Nixon Peabody about your</p>

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<p>1 disciplinary history?</p> <p>2 A. Yes.</p> <p>3 Q. And you also provide them a bio that</p> <p>4 contains information about you?</p> <p>5 A. Yes.</p> <p>6 Q. And that is in the pitch book?</p> <p>7 A. Yes.</p> <p>8 Q. When did you start accepting investors</p> <p>9 into Everloop LP?</p> <p>10 A. My guess would be June 2011.</p> <p>11 Q. Do you remember ever having a conversation</p> <p>12 with the Everloop LP investors before June 2011 about</p> <p>13 your disciplinary history?</p> <p>14 A. I don't recall.</p> <p>15 Q. Did you have a conversation with the</p> <p>16 Everloop LP investors after June 2011 about your</p> <p>17 disciplinary history, say from June 2011 until</p> <p>18 February 2012?</p> <p>19 A. I can't recall.</p> <p>20 Q. Do you know if any investor for Everloop</p> <p>21 LP asked you about the disciplinary history from</p> <p>22 June 2011 until February 2012?</p> <p>23 A. I can't say for certain the dates and who</p> <p>24 asked me what and when and the dates. Sorry.</p> <p>25 MS. KIM: Counsel, did you say something?</p>	<p>1 MS. KIM: It is also on the first page.</p> <p>2 A. Around there, yeah.</p> <p>3 Q. Just comparing -- I want to go to your</p> <p>4 bio, which is on page 5. I just want to -- you sent</p> <p>5 him bullet points, but then there is a bio here. Who</p> <p>6 wrote that? Did Nixon write that or did you write</p> <p>7 that?</p> <p>8 MR. LAWRENCE: By "that," you are</p> <p>9 referring to tab one which is the PPM --</p> <p>10 MR. RAWLINGS: Everloop PPM.</p> <p>11 A. To my knowledge, Nixon Peabody wrote it.</p> <p>12 Q. For example, on page 20 of the email,</p> <p>13 member of Bennington Investment Management advisory</p> <p>14 board was like the seventh bullet, but when you go to</p> <p>15 page 5 of PPM one, it is the second sentence. Do you</p> <p>16 see that?</p> <p>17 A. Yes.</p> <p>18 Q. Did you have any discussions with Nixon</p> <p>19 about where to put in investment -- management advisory</p> <p>20 board in the bio?</p> <p>21 A. No.</p> <p>22 Q. There is also the difference between --</p> <p>23 the sentence about 12 years of experience in the</p> <p>24 investment community. That is bullet two, right?</p> <p>25 A. Yes.</p>
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<p>1 MR. LAWRENCE: Just a second, please. I</p> <p>2 am sorry. I wanted to see if I wanted to ask a</p> <p>3 clarifying question or -- no. I'm fine.</p> <p>4 Q. February 2012 you have a call with some</p> <p>5 potential investors for Agrivida LLC in which they ask</p> <p>6 you --</p> <p>7 BY MR. RAWLINGS:</p> <p>8 Q. Sorry. Before this, can we just go back</p> <p>9 to -- I want to take the PPM that is for the Everloop</p> <p>10 PPM, which is in tab 1 of Exhibit --</p> <p>11 MS. KIM: Exhibit 6.</p> <p>12 Q. If you go to page 5 of that PPM and pull</p> <p>13 out page 20 of Exhibit 7 --</p> <p>14 A. Say that again?</p> <p>15 Q. Page 20 of Exhibit 7.</p> <p>16 MR. LAWRENCE: The presentation.</p> <p>17 Q. The presentation. You sent this</p> <p>18 presentation to Mr. Koeppel, as the email says, in the</p> <p>19 middle of May 2011, correct?</p> <p>20 A. Yes.</p> <p>21 Q. The PPM which is tab one of the exhibit</p> <p>22 you are looking for of Everloop is dated May 2011. I</p> <p>23 just wanted to ask you, if you look back on the</p> <p>24 signature page, it is May 2011. Do you recall that</p> <p>25 that was when the PPM for Everloop was dated?</p>	<p>1 Q. But it is sentence three in the bio. Did</p> <p>2 you have any discussions with Nixon about where it</p> <p>3 should go in the bio?</p> <p>4 A. No.</p> <p>5 Q. Because the sentence "Mr. Gray" -- I am</p> <p>6 reading now from page 5 -- "Mr. Gray is a registered</p> <p>7 investment advisor for NASD licenses Series 6, 7, 63</p> <p>8 and 65." That is bullet 4 on page 20, right?</p> <p>9 A. Yeah.</p> <p>10 MS. KIM: Other than the word "for."</p> <p>11 Q. Other than the word "for."</p> <p>12 A. So bullet point on page 20, registered</p> <p>13 investment advisor, NASD, licenses Series 6, 7, 63,</p> <p>14 65 so that's what I wrote. What Nixon Peabody wrote</p> <p>15 was something different, and just -- you can't be a</p> <p>16 registered investment advisor for NASD. You just</p> <p>17 can't. I mean, it's not . . .</p> <p>18 Q. When did you come to have that</p> <p>19 realization?</p> <p>20 A. When did I know you couldn't be a --</p> <p>21 well, I've known that forever. You need -- if you</p> <p>22 want me to clarify?</p> <p>23 Q. Clarify, sure.</p> <p>24 A. To be a registered investment advisor I</p> <p>25 would need to be a registered investment advisor with</p>

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<p>1 a firm. The NASD is a regulatory body -- was a 2 regulatory body. Now it is FINRA -- so it is just an 3 incorrect statement that -- it is just a factually 4 incorrect statement. 5 Q. I guess what I am wondering, then, if you 6 would have reviewed this PPM in draft when Nixon sen 7 it back to you, why didn't you catch the factually 8 incorrect statement that Mr. Gray is a registered 9 investment advisor for NASD licenses: Series 6, 7, 10 63, 65? 11 A. I reviewed it. I missed it. 12 Q. Did you ever have a discussion with Nixon 13 that it is an incorrect statement? 14 A. I can't recall. 15 Q. And I really want to -- do you recall any 16 specific discussion with Nixon about a decision to not 17 mention anything about the disciplinary history either 18 in the bio or in some other place of the private 19 placement memorandum that is Exhibit 1? 20 A. For Everloop? 21 Q. Correct. 22 A. Nixon Peabody asked me in this email for 23 everything. I told them everything about employment 24 history, board -- who I was with on the board, et 25 cetera, so I gave them everything they needed to know</p>	<p>1 Again Google search Greg Gray or 2 Archipel -- It is Gregory W. Gray, Jr., and in an 3 email to her I described exactly to her exactly what 4 went on, my side of the story, and over that period 5 of time we had discussions with Nixon Peabody about 6 broker dealer, how do we -- you know, what is the 7 best course of action for us to proceed to accept 8 money for our clients. 9 MS. KIM: For the record, I asked the 10 court reporter to mark as Exhibit 9 an email from 11 Hilary DeCesare to Mr. Gray copying Mr. Edwards dated 12 March 2nd, 2011, Bates range is ARCHIPHEL 026797 13 through 799. 14 (Email dated March 2, 2011 marked Exhibit 15 9.) 16 BY MR. RAWLINGS: 17 Q. Very brief question. Is this the email 18 you were referring to, that you were just talking 19 about? 20 A. Yes. 21 Q. And your response to Hilary about the 22 disciplinary action, we can assume that at the time 23 you wrote this email, those were your true firmly held 24 beliefs about the disciplinary action at the time? 25 A. Yes.</p>
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<p>1 so I relied on counsel to put information in here 2 they thought was relevant. 3 Q. When you say you gave them everything they 4 needed to know, you are referring to the phone 5 conversation which you told him about your 6 disciplinary history, correct? 7 A. Yes. 8 Q. And presumably also you sending them this 9 bio, correct? 10 A. Yes. 11 Q. So you are relying on them but you don't 12 specifically -- do you specifically recall a 13 discussion with them about do I or -- do I need to 14 disclose this in a PPM? 15 A. I don't recall a conversation. 16 Q. But you know that they knew about it 17 because you told them about it, correct? 18 A. Yes. 19 Q. And you told them about it before you sent 20 them this email; is that correct? 21 A. Yes. So approximately April-ish 2011 I 22 sent the CEO of Everloop -- Hilary DeCesare, doing 23 her due diligence on Archipel Capital, asked me about 24 "Hey" -- was doing her due diligence on us. "Can you 25 explain this document to me?"</p>	<p>1 Q. How soon after the May 2011 Everloop PPM 2 became final did you start soliciting investors in 3 Everloop? 4 A. I would say almost instantaneous. Nixon 5 Peabody or an entity thereof was an investor. Greg 6 Edwards our chairman was an investor almost 7 immediately so I would say within a two-week time 8 period. 9 Q. Were there also investor presentations in 10 which you met large groups of investors to ask them if 11 they were interested in Everloop? 12 A. We would have roadshows with Hilary 13 DeCesare, the CEO, and we would fly her into Syracuse 14 to meet with investors either on a one-on-one basis 15 or a larger forum. 16 Q. At any of those presentations do you 17 recall your regulatory history coming up, at any of 18 those presentations? 19 A. I don't believe it did. 20 Q. I just want to make sure. So you during 21 those presentations did not orally inform any of the 22 prospective investors "Look, I want you to know I have 23 this disciplinary history"? 24 A. I wasn't doing the presentation, just to 25 clarify. My job was bringing in the CEO of the</p>

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<p style="text-align: right;">Page 145</p> <p>1 overall investment, and she was the one doing the 2 presentation so it wasn't my forum to speak. 3 Q. Got it. Did you ever talk to Hilary about 4 whether or not the people who -- the people who were 5 gathered to do the investment, you got them to there, 6 right? So it is Archipel. You are the one who is 7 sort of getting the investors together? 8 A. Archipel we mentioned earlier. We had 9 people we worked with such as Mr. Russo, Mr. McMahon. 10 Again, utilizing their network, we would fill the 11 room, yes. 12 Q. Did you ever have any conversation with 13 Hilary about whether or not there was any obligation 14 or duty, or it would be a good idea to let those 15 prospective investors know about your prior 16 disciplinary history? 17 A. I don't recall. 18 Q. Okay. I just kind of want to get the 19 facts. She sees it, she asks you about it, you give 20 her an explanation. Then you go out and solicit 21 investors. I just want to know if the two of you ever 22 talked about whether or not it was something that you 23 should tell everybody before they invest or not. 24 I think you are answering that question 25 no. I just want to make sure I made it clear what I</p>	<p style="text-align: right;">Page 147</p> <p>1 BY MR. RAWLINGS: 2 Q. Just walking through the binder, tab two 3 is updated as of June 2012, Bennington Everloop LP. 4 If you turn to page 5, you will see that the language 5 in your bio did not change. I just want to confirm, 6 you don't recall any conversations with Nixon about 7 whether or not the bio should change between May and 8 June, correct? 9 A. Correct. 10 Q. And actually, I misspoke. The difference 11 is between May 2011 and June 2012 so it is actually a 12 whole year-and-a-half has gone by? 13 A. Correct. 14 Q. Even so, you don't recall any discussions 15 with Nixon about whether or not the bio should be 16 changed in the June 2012 Everloop supplement, we will 17 call it? 18 A. Correct. 19 BY MS. KIM: 20 Q. So the Agrivida private placement 21 memorandum comes up September 2011; is that right? 22 That would be tab three of Exhibit 6? 23 A. September 2011, yes.. 24 Q. And this one on page 5 of the private 25 placement memorandum, Bates ARCHIPEL 00921, it</p>
<p style="text-align: right;">Page 146</p> <p>1 was asking. 2 A. Correct. 3 Q. Did you ever tell Hilary that you told 4 Nixon Peabody about the investor history -- not the 5 investor history -- about the disciplinary history? 6 A. I can't recall. 7 Q. Okay, all right. 8 BY MS. KIM: 9 Q. Did you tell Nixon Peabody that she had 10 asked you about the disciplinary history, that Ms. 11 DeCesare asked you about the disciplinary history? 12 A. Yes. 13 Q. Did you tell them that -- when did you 14 tell them that? 15 A. Shortly thereafter. Again, when we 16 were -- we, meaning Greg Edwards, myself, Nixon 17 Peabody -- were trying to formulate a game plan to 18 best legally accept monies from investors, this is 19 how we went about doing it. 20 So we used that email from Hilary 21 basically saying "Okay, she has a concern. She 22 looked at it. She is not comfortable with me, with 23 us. What is the best way to proceed; broker dealer, 24 not a broker dealer, Bennington Investment 25 Management," so on and so forth.</p>	<p style="text-align: right;">Page 148</p> <p>1 contains the bios on managing member management, and 2 this contains your bio, and this is unchanged from the 3 Everloop PPM; is that correct? 4 A. It looks that way. 5 Q. The attorneys on this deal were different, 6 correct? 7 A. Correct. 8 Q. Did you provide this page to Green &amp; 9 Seifter? 10 A. We gave a template of our Everloop docs 11 to Green &amp; Seifter. 12 Q. Did they use that template then to create 13 this private placement memorandum? 14 A. Yes. 15 BY MR. RAWLINGS: 16 Q. Recognizing, and I want you to be alert to 17 this, recognizing we have a particular waiver in place 18 that belongs to Nixon and not this other entity, I 19 don't want to know the content of any of the legal 20 advice, but -- 21 MR. LAWRENCE: Actually, we intend to 22 waive with regards to the preparation for the PPM with 23 regards to Agrivida as well so you have some rope here 24 to ask questions. 25 Q. Do you recall any conversations with those</p>

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1 lawyers, the lawyers for tab three, about your  
2 disciplinary history?  
3 A. I don't recall.  
4 Q. Do you think they knew or didn't know? I  
5 mean, do you have a sense? Is there any way you  
6 can --  
7 A. Actually -- let me recant my first  
8 statement. They did know. They sent me an email to  
9 fill out with state registration that they pre-filled  
10 out the boxes about have you ever been subject to  
11 regulatory history, so on and so forth, and they  
12 pre-filled it out, and that is when I called them and  
13 said that's not right, so on and so forth.  
14 For whatever reason they didn't file the  
15 necessary forms with the state. They went with a  
16 different exemption, if you will.  
17 Q. Just the time period for that would have  
18 been sometime before September 2011?  
19 A. I don't know. I can't recall. I am  
20 sorry.  
21 MR. LAWRENCE: I think counsel is pointing  
22 you to the date of the Agrivida PPM dated  
23 September 2011 and saying logically it would be before  
24 the finalization of this PPM.  
25 A. I can't recall specifically the date that

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1 we had that conversation.  
2 Q. Okay. And how soon after September 2011  
3 did you start selling interest in Agrivida LLC?  
4 A. I believe we didn't actually invest until  
5 2012. I am pretty accurate with that so 90 days.  
6 Q. And this is the investment we talked  
7 about. The conference call was Agrivida investors who  
8 raised the issue of your disciplinary history,  
9 correct?  
10 A. Yes. Mr. Berrin, Mr. Chesnois.  
11 Q. And seeing the September 2011 date of  
12 this, does that help you place in time when that  
13 happened? Does that change to any extent the time you  
14 told us before, which I believe was early 2012?  
15 A. No. I still think we had the conference  
16 call with them -- I want to say February.  
17 Q. Your best --  
18 A. To my best knowledge.  
19 BY MS. KIM:  
20 Q. If you go to tab four, this is the private  
21 placement memorandum for Bloom Energy LP dated  
22 March 2012; is that right?  
23 A. Yes.  
24 Q. And page 5 of the document, Bates  
25 NP-SEC-0000154 is again the bio page for Mr. Edwards

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1 you and Mr. Stelljes?  
2 A. Correct.  
3 Q. And the bio is unchanged for you here?  
4 A. Yes.  
5 Q. Unchanged from the PPMs for Everloop,  
6 Bennington Everloop LP and Agrivida LLC?  
7 A. Yes.  
8 BY MR. RAWLINGS:  
9 Q. Just to continue on with the time line, so  
10 February of 2012 is your best recollection the  
11 Agrivida investors raise it with you, right?  
12 A. Yes.  
13 Q. Do you recall going back to Nixon Peabody  
14 after they raised it with you, you had a conversation  
15 with Devin Stelljes about your background?  
16 A. Yes.  
17 Q. When I say background, I mean your  
18 disciplinary history, correct?  
19 A. Yes.  
20 Q. Do you recall any conversations with Nixon  
21 Peabody between that conference call, which would have  
22 been February of 2012, and the finalization of this  
23 PPM in March 2012 in which you alerted Nixon Peabody  
24 to the fact that some investors in Agrivida asked you  
25 about the disciplinary history?

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1 A. So when the investors brought it to my  
2 attention, we were using Green & Seifter at that time  
3 so we did go back and then reuse Nixon whenever the  
4 date was with this, March 2012, and said we need to  
5 form a new entity, Bloom Energy LP, and that's when  
6 they formed it, but I don't recall specifically a  
7 conversation.  
8 Q. Did Nixon know that you were using the  
9 other law firm for the other deal?  
10 A. Yes.  
11 Q. So there wouldn't have been any reason for  
12 you to keep that conversation from Nixon?  
13 A. Correct.  
14 Q. When I say "that conversation," I am  
15 speaking the February conversation with Agrivida  
16 investors.  
17 A. Correct.  
18 Q. I just want to make sure, you can't recall  
19 going back to Nixon with respect to the March 2012  
20 PPM?  
21 A. I don't.  
22 Q. On whether or not it should be disclosed  
23 to investors?  
24 A. Correct.  
25 BY MS. KIM:

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<p style="text-align: right;">Page 153</p> <p>1 Q. Tab six is the March 2012 PPM for Archipel 2 Capital-Lineagen LP. That is the same date as this 3 Bloom Energy LP PPM, same month? 4 A. Yes. 5 Q. So Mr. Rawlings' questions would apply for 6 this PPM as well; that you would not have gone back to 7 Nixon Peabody in the interim to discuss the 8 disciplinary history? 9 A. Correct, yes. 10 Q. If you go to tab eight, this is the 11 June 2012 confidential private placement memorandum 12 for Archipel Capital-Social Media Fund LP. 13 A. Yes. 14 Q. And on page 5 of this private placement 15 memorandum, again has a bio page for you, Mr. Edwards 16 and Mr. Stelljes? 17 A. Yes. 18 Q. And the language here for your bio reads 19 the same as in the earlier private placement 20 memorandum? 21 A. Correct, yes. 22 Q. So between March 2012 when the Bloom 23 Energy LP and Lineagen LP PPMs came out and this 24 June 2012 PPM for Social Media Fund LP, do you recall 25 any conversations with Nixon Peabody regarding your</p>	<p style="text-align: right;">Page 155</p> <p>1 A. I would have to ask our counsel. 2 Q. Is there a registration statement for the 3 offerings? 4 A. I don't know. We would have relied on 5 counsel for that. 6 Q. Do you know were the investors for the 7 Archipel Capital-related investment opportunities, 8 were those all accredited investors? 9 A. Yes. 10 Q. How do you know they were accredited? 11 A. We had them fill out subscription 12 documents attesting to that fact. 13 Q. Did you do anything to further confirm 14 they were accredited? 15 A. They were all personal relationships of 16 mine or the affiliated representative who knew they 17 would be able to take on this level of risk so there 18 was a personal relationship involved. 19 Q. Were any investors unaccredited? 20 A. Not to my knowledge, no. 21 Q. So going back to the documents. 22 MS. KIM: Please. 23 (Email dated October 28th, 2012, marked 24 Exhibit 10.) 25 MS. KIM: I have asked our court reporter</p>
<p style="text-align: right;">Page 154</p> <p>1 disciplinary history? 2 A. We would just have continued 3 conversations on a yearly basis about making sure we 4 are properly registered so we would spend five or 5 \$10,000 a year as Dodd Frank would continue to evolve 6 making sure that we are compliant. 7 BY MR. RAWLINGS: 8 Q. When you say properly registered, what are 9 you referring to? Because you weren't a registered 10 broker dealer, right? 11 A. That's what we would visit, in a sense 12 that we always thought that would be a possibility. 13 Next week, next month, next year, we always thought 14 that listen, we might have to be a broker dealer some 15 day. Okay. 16 But it is very costly. We don't want to 17 get in on the funds, stocks, bonds. That is not who 18 we are. That is not what we want to do. 19 So we were just properly kept up to speed 20 about how best to proceed as a firm, and we relied on 21 Nixon's advice and what we needed to do. 22 BY MS. KIM: 23 Q. When you sold the securities, you didn't 24 register the offerings for the Archipel 25 Capital-related entities, right?</p>	<p style="text-align: right;">Page 156</p> <p>1 to mark NY 9143 Exhibit 10. This is an email from 2 Mr. Russo to Mr. Gray and Mr. Koeppel copying Mr. 3 McMahon dated October 28th, 2012, Bates stamped 4 ARCHIPEL 006945 through 6948. 5 Q. Do you recognize this email, this chain of 6 emails? 7 A. Yes. 8 Q. Mr. Russo and you have an exchange 9 regarding your disciplinary history, correct? 10 A. Yes. 11 Q. Do you know why Mr. Koeppel was included 12 on this email? 13 A. No. 14 Q. Before October 28, 2012, did you have any 15 conversations with Mr. Russo about your disciplinary 16 history? 17 A. Mr. Russo and his family are a very 18 sophisticated family, and I can't recall exactly when 19 it came up, but I'm sure it came up. 20 Q. When you say "it came up," what do you 21 mean? 22 A. My past regulatory history. 23 Q. Did they -- is it your understanding that 24 they knew about your disciplinary history before 25 investing?</p>

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<p style="text-align: right;">Page 157</p> <p>1 A. Yes. Andy Russo is extremely 2 technologically savvy and thorough, and he would have 3 done his due diligence on me and my firm prior to him 4 and his family investing. 5 Q. Just for the record, Mr. Russo and his 6 family members have invested in Archipel Capital 7 entities? 8 A. Yes. 9 Q. Do you recall why you guys had -- do you 10 recall why you and Mr. Russo had this conversation 11 about your disciplinary history? 12 A. Yes. 13 Q. Can you explain? 14 A. Around this time, Andy Russo was named 15 the CFO of one of our portfolio companies, Everloop, 16 and I was extremely agitated that he was unqualified 17 to be the CFO of the company at that point in time. 18 Two, Everloop needed board approval to 19 hire a CFO, which they did not get. 20 Q. So what -- how did that lead to this 21 exchange? 22 A. This is Andy Russo trying to change the 23 conversation, meaning that we had a group of Everloop 24 investors now realizing that this investment was in 25 trouble, because everybody in Everloop, the</p>	<p style="text-align: right;">Page 159</p> <p>1 that Nixon Peabody was consulted concerning that too 2 so we want to -- we are limiting our waiver with 3 regard to those because, frankly, those areas, 4 although I can't see how an investor would have a 5 potential claim against them, there obviously was the 6 potential for litigation so the communications between 7 Mr. Gray and Nixon Peabody for that purpose would have 8 been in anticipation of potential litigation so we are 9 going to go ahead and assert privilege over those 10 communications for now. 11 MR. RAWLINGS: Let me ask the question a 12 different way, which will explain that we are getting 13 exactly at disclosure. 14 BY MR. RAWLINGS: 15 Q. If you could turn your attention to tab 10 16 of the PPM, which is the April 2014 Archipel 17 Capital-Social Media Fund LP. 18 A. Sorry. What page? 19 Q. Tab 10. If you turn to page 5 of that 20 PPM, you will see the background, and you will see 21 that the background has not changed from the previous 22 PPMs. I guess the question we are trying to get at, 23 as it pertains to whether or not the issues that were 24 being discussed in the October 28, 2012 email 25 pertaining to the disciplinary history that Mr.</p>
<p style="text-align: right;">Page 158</p> <p>1 investment, knows Andy Russo, knows he is unfit and 2 unqualified to be the CFO of a company, who lives in 3 Syracuse, New York; how he could be the CFO of a 4 company in San Francisco, approximately around San 5 Francisco? 6 And I wanted to be accurate with our 7 clients and let them know he is not fit, and to my 8 experience he is not fit to be CFO, and it became a 9 personal battle between Andy Russo and myself, and he 10 was trying to change the conversation with him and 11 his investors. 12 Q. Do you remember speaking with Mr. Koeppel 13 about this email? 14 A. Not specifically this email. 15 MR. LAWRENCE: This question gets a little 16 dicey, because now we are getting past the fund 17 formation, and I don't -- we want to be as helpful as 18 possible to the staff, and to the extent that these 19 communications become relevant and the drafting of a 20 subsequent document, then maybe we can tie it in that 21 way, but just -- there is this dispute and there is 22 also disputes -- disputes may be too strong of a word, 23 but there is disagreements and arguing, if you will, 24 about Twitter, Twitter shares and distribution after 25 all the money is made with the investors, and I know</p>	<p style="text-align: right;">Page 160</p> <p>1 Koeppel is being aware of, because he is cc'd on this, 2 did you have any discussions with him at any time 3 between October and April 2013 as to whether or not 4 the biography should be changed in the Social Media 5 Fund LP to say anything about the disciplinary 6 history? 7 A. No. 8 Q. Given what you have already told us, which 9 is that sometime in 2014 Koeppel tells you "We should 10 get out in front of this," I would assert probably 11 that on October 28, 2012, the issue is being 12 presented, and I am just sort of wondering as a person 13 who has dealt with Mr. Koeppel, why do you think the 14 admonition to get out in front of it, being your 15 disciplinary history, wouldn't have occurred to either 16 him or you as a topic of conversation to address 17 between late October and the next PPM, which is 18 April 2013? 19 A. You would have to ask him. I mean, at 20 the end of the day, he asked me what he needed to be 21 in the PPM. I gave him everything he asked for, and 22 he put it in the PPM. Nixon Peabody created the 23 documents. 24 This isn't the only email that, you know, 25 pertains to my regulatory history. There is another</p>

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1 one a month from there, two months from there when  
 2 Andy Russo and I had our battle royale, if you will,  
 3 so that would be a better question to ask Nixon.  
 4 When they prepared the documents, I gave them what  
 5 they asked for.  
 6 Q. I mean, that's -- we could go through a  
 7 bunch of those. We have seen a bunch of those so we  
 8 all know that there was a battle royale about your  
 9 disciplinary history, but the thing that is strange is  
 10 that that battle royale does not seem to correspond to  
 11 the 2014 Late Stage Fund PPM. It seems to in our mind  
 12 to have affected perhaps or logically might have  
 13 affected previous PPMs like the Social Media Fund. I  
 14 am just wondering if you know if helping frame it that  
 15 way helps you recognize at what point in time then or  
 16 what incident it might have been that would have  
 17 spurned Mr. Koepfel to say "Okay, now let's get out in  
 18 front of it and let's put it in the Late Stage Fund  
 19 PPM?"  
 20 A. It was really the email, the email in  
 21 May 2014. He said "Hey, let's look at these items,  
 22 and let's try to get in front of this issue."  
 23 MR. LAWRENCE: That is from his  
 24 perspective.  
 25 Can I ask a question?

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1 Given -- you were relying on Nixon Peabody  
 2 to tell you what needed to be disclosed in the PPMs,  
 3 correct?  
 4 THE WITNESS: Correct.  
 5 MR. LAWRENCE: So even though you didn't  
 6 have a discussion explicitly regarding whether or not  
 7 your regulatory disclosure -- regulatory history  
 8 needed to be disclosed in a PPM, you were nonetheless  
 9 relying upon them to put it in the PPM if it was  
 10 required, correct?  
 11 THE WITNESS: Correct.  
 12 MR. LAWRENCE: Given that your lawyers  
 13 weren't indicating it was necessary to be disclosed in  
 14 the PPM, why didn't you suggest that your prior  
 15 regulatory history be disclosed in the PPM?  
 16 THE WITNESS: I didn't know it needed to  
 17 be disclosed. Nixon gave me everything, and they said  
 18 "Here's what we need from you." I gave them  
 19 everything we needed, and I relied on their guidance.  
 20 Q. How about in solicitations for votes in  
 21 the April 2013 Social Media Fund? When you gave  
 22 roadshows and presentations to those investors, was  
 23 there anything in those presentations that would have  
 24 generally let people know that there is a disciplinary  
 25 history that may or may not be an issue, but alerted

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1 them to that?  
 2 A. We didn't do roadshows for Twitter. So  
 3 our business model is kind of two-fold. One, we got  
 4 actively with a company like Lineagen and Everloop  
 5 through the COs; others ones like Twitter and Bloom  
 6 Energy, we just got invited to the party, if you  
 7 will. The ones we got invited to the party we didn't  
 8 do roadshows. Usually those clients came from our  
 9 existing relationships and/or referrals from existing  
 10 relationships. Does that better answer your  
 11 question?  
 12 Q. It does, although I guess any prospective  
 13 investor in the Late Stage Fund, in Social Media Fund,  
 14 their information about the fund, they would then be  
 15 getting it from the PPM, correct?  
 16 A. Right. I would say to better answer your  
 17 question or further explain, our largest investors,  
 18 the majority of our investors in Social Media Fund  
 19 were relationships of Andy Russo, either an entity he  
 20 controlled specifically or his relationships  
 21 directly.  
 22 Most, if not all, those investments came  
 23 after October 20th, 2012.  
 24 So to be blunt, we had a brouhaha, kissed  
 25 and made up like you do in a business relationship.

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1 To be blunt, he hated what I did. He recognized  
 2 Everloop is failing and he couldn't circle the  
 3 wagons, so then he started kissing my butt again to  
 4 try to distance himself from that failure.  
 5 Then when he was done with me again at  
 6 Twitter, he threw me on the curb again. I mean, he  
 7 is a great manipulator.  
 8 But, again, if you are looking at all the  
 9 relationships he brought to the table, those were all  
 10 his investors after October 20th, 2012 so they would  
 11 have been aware through Mr. Russo about my regulatory  
 12 history.  
 13 MR. LAWRENCE: I would just caution the  
 14 witness that metaphors don't read well in a transcript  
 15 although we all know what they mean.  
 16 THE WITNESS: I will change.  
 17 MR. LAWRENCE: Try to use a little more  
 18 precise language.  
 19 Q. Just to make clear what you are saying,  
 20 what you are saying is that you think because Andrew  
 21 Russo is raising the issue in October 2012, that the  
 22 vast majority of the Social Media Fund investors from  
 23 April 2013 came through him, and so they would have  
 24 been told by him about your background?  
 25 A. Yes.

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<p>1 Q. Okay.</p> <p>2 A. Case in point is all these -- most of</p> <p>3 these social media investors now know about the SEC</p> <p>4 investigation through Mr. Russo, and then they call</p> <p>5 me regarding it.</p> <p>6 So I know for a fact that that is how he</p> <p>7 operates.</p> <p>8 BY MS. KIM:</p> <p>9 Q. Did those -- you said those investors are</p> <p>10 calling you now about the disciplinary history?</p> <p>11 A. No. Just about -- "Hey, Andy Russo is</p> <p>12 calling me about this SEC thing. What's going on?"</p> <p>13 Q. You mean this investigation, correct?</p> <p>14 A. Yes. Sorry.</p> <p>15 Q. So the bios sometimes have Devin Stelljes,</p> <p>16 sometimes don't have a third party and sometimes have</p> <p>17 Bradford LaSalle. Can you explain how that changed?</p> <p>18 A. So approximately, I would say, right</p> <p>19 around this email, October 28th-ish, obviously Andy</p> <p>20 Russo and I had a severe disagreement.</p> <p>21 Andy was trying to manipulate Devin to</p> <p>22 come work for him so Devin left my firm, Archipel</p> <p>23 Capital, and went to go work with Andrew Russo at</p> <p>24 that point in time.</p> <p>25 So he would have been taken out of the</p>	<p>1 Q. What about -- what are still open?</p> <p>2 A. Archipel Capital-Agrivida LP or LLC is</p> <p>3 open without a liquidity event. We do not plan on</p> <p>4 investing more currently.</p> <p>5 Archipel Capital-Lineagen LP just closed</p> <p>6 in December 2014. If they need another round of</p> <p>7 financing, we will reevaluate at that time so we are</p> <p>8 not accepting any new money as it just closed. I</p> <p>9 think that's it.</p> <p>10 Q. You said Bloom Energy LP and Late Stage</p> <p>11 Fund LP are accepting new investors?</p> <p>12 A. Yes.</p> <p>13 Q. Is that happening in 2015?</p> <p>14 A. Yes.</p> <p>15 Q. Have you received any investments in 2015</p> <p>16 for any of those entities?</p> <p>17 A. I received one investment for -- from one</p> <p>18 investor, yes.</p> <p>19 Q. And who was that investor?</p> <p>20 A. Mr. Huang, H-U-A-N-G.</p> <p>21 Q. And which entity did Mr. -- do you know</p> <p>22 his first name?</p> <p>23 A. I don't. I am sorry.</p> <p>24 Q. Which entity did Mr. Huang invest in?</p> <p>25 A. The Archipel Capital-Bloom Energy LP.</p>
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<p>1 PPMs, because he no longer worked for Archipel</p> <p>2 Capital, and then I don't exactly recall when Brad</p> <p>3 LaSalle joined the firm, but he would have been</p> <p>4 inserted into our PPMs.</p> <p>5 Q. Did you ask for Mr. LaSalle to be removed</p> <p>6 from that bio section?</p> <p>7 A. Probably.</p> <p>8 Q. You would have told -- you would have told</p> <p>9 Nixon Peabody to remove him?</p> <p>10 A. Yes.</p> <p>11 Q. And then later you would have told Nixon</p> <p>12 Peabody to add Mr. LaSalle?</p> <p>13 A. Yes.</p> <p>14 Q. And at that time did you review the bio</p> <p>15 section?</p> <p>16 A. Mine or Brad's?</p> <p>17 Q. The bio page in general.</p> <p>18 A. No. I don't believe so.</p> <p>19 Q. Which offerings are still accepting</p> <p>20 investors?</p> <p>21 A. New monies or that are open?</p> <p>22 Accepting -- just to clarify.</p> <p>23 Q. Accepting new money.</p> <p>24 A. Archipel Capital-Bloom Energy LP and</p> <p>25 Archipel Capital-Late Stage Fund.</p>	<p>1 Q. What was the date of that investment?</p> <p>2 A. The investment is not complete. It is a</p> <p>3 staggered investment, if you will, takes about a</p> <p>4 month process from start to finish for the investment</p> <p>5 so the investment won't be finished until next week.</p> <p>6 The investment amount will be, I believe,</p> <p>7 470,000 when it is all said and done. It comes in</p> <p>8 different tranches.</p> <p>9 Q. Has he started to -- has Mr. Huang started</p> <p>10 to give you the investment tranches for Bloom Energy</p> <p>11 LP?</p> <p>12 A. Yes.</p> <p>13 Q. When did that start?</p> <p>14 A. Middle part of February, to the best of</p> <p>15 my knowledge.</p> <p>16 MR. LAWRENCE: Can I ask a follow-up</p> <p>17 regarding that?</p> <p>18 Did you tell -- not very good with names</p> <p>19 here -- Mr. Huang to wait until March when the</p> <p>20 documents were completed with new counsel on board</p> <p>21 before sending the money?</p> <p>22 THE WITNESS: Yes. Originally Mr. Huang</p> <p>23 was supposed to make the investment in December 2014</p> <p>24 I spoke with them January. I said "We want to take</p> <p>25 the investment in March. Let us update our documents</p>

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1 to reflect 2015."  
 2 At that point in time they said not a  
 3 problem; they will be ready to go then.  
 4 Approximately two weeks later he said "The  
 5 currency is getting killed right now. Our investors  
 6 want to start to process now."  
 7 "It takes a month anyway. We will update  
 8 the documents."  
 9 "When you get them updated, we will sign  
 10 the paperwork then."  
 11 BY MR. RAWLINGS:  
 12 Q. You mentioned currency. Is he in another  
 13 country?  
 14 A. Yes.  
 15 Q. What country?  
 16 A. China.  
 17 Q. Do you talk with him directly or do you  
 18 have an intermediary?  
 19 A. I have an intermediary.  
 20 Q. Who is that?  
 21 A. Yunhan, Y-U-N-H-A-N, last name Z-H-A-N-G.  
 22 BY MS. KIM:  
 23 Q. Just sticking with Bloom Energy LP, can  
 24 you generally walk us through that investment?  
 25 A. What would you like?

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1 Q. What is the investment? How is it  
 2 structured?  
 3 A. You don't want to know about the actual  
 4 company, what they do?  
 5 Q. No.  
 6 A. I could tell you.  
 7 The structure is a 5 percent management  
 8 fee up front with a 10 percent carried interest.  
 9 Q. And how did you get the opportunity to  
 10 invest in Bloom Energy Corporation?  
 11 A. So I have been -- Greg Edwards has been a  
 12 personal investor in Bloom Energy since approximately  
 13 2007. I was the soliciting broker at that point in  
 14 time through Advanced Equities. It has always been a  
 15 personal favorite of our investments.  
 16 When looking at companies that fit our  
 17 portfolio, revenue-based companies, last money in,  
 18 first money out, 3 to 5 X return, we identify Bloom  
 19 as a perfect fit for our portfolio.  
 20 Q. Did Bloom Energy LP invest directly into  
 21 Bloom Energy Corporation?  
 22 A. Yes.  
 23 Q. Was that done through purchase of shares  
 24 from Bloom Energy Corporation or was that done through  
 25 the secondary market in some way?

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1 A. The answer is both. So Bloom Energy is  
 2 aware of the transaction. There is a stock transfer  
 3 agreement that Bloom and its whomever, let's say  
 4 CFO -- actually, I don't know who signs on their  
 5 behalf.  
 6 So they have a seller, a buyer, there are  
 7 documents that Nixon Peabody reviewed so it is common  
 8 stock issued by Bloom Energy.  
 9 (Spreadsheet marked Exhibit 11.)  
 10 (Bloom Energy stock certificate marked  
 11 Exhibit 12.)  
 12 Q. I have asked the court reporter to mark as  
 13 Exhibit 11 documents that have been Bates stamped  
 14 ARCHIPEL 00805 through 810, and it appears to be a  
 15 printout of a spreadsheet.  
 16 Mr. Gray, do you recognize this document?  
 17 A. Yes.  
 18 Q. Can you explain what it is?  
 19 A. This would be a document of our investors  
 20 and the investment amount.  
 21 Q. This is a document which shows investors  
 22 for Lineagen LP, Bloom Energy LP and Agrivida LLC; is  
 23 that right?  
 24 A. Yes.  
 25 Q. I have also given you a document that has

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1 been stamped as NY-9143 Exhibit 12, and this is Bates  
 2 stamped ARCHIPEL 012355. Do you recognize this  
 3 document?  
 4 A. Yes.  
 5 Q. Can you describe what it is?  
 6 A. This is a stock certificate issued on  
 7 behalf of Bloom Energy Corporation to Archipel  
 8 Capital.  
 9 Q. Is that to Archipel Capital-Bloom Energy  
 10 LP?  
 11 A. Sorry.  
 12 To Archipel Capital-Bloom Energy LP.  
 13 Q. And it is for 30,000 shares?  
 14 A. Correct, yes.  
 15 Q. And it is dated November 16, 2012 at the  
 16 bottom just above the center?  
 17 A. Yes.  
 18 Q. Does this document, Exhibit 12, reflect a  
 19 purchase of Bloom Energy Corp. common stock?  
 20 A. Yes.  
 21 Q. Do you know who you purchased this 30,000  
 22 set of shares from?  
 23 A. This block? I don't. I am sorry --  
 24 well, yeah. Bloom Energy. Does that answer your  
 25 question?

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<p>1 Q. Was it purchased from Bloom Energy the</p> <p>2 corporation?</p> <p>3 A. Yes.</p> <p>4 Q. So Archipel Capital-Bloom Energy LP</p> <p>5 received about 30,000 shares of common stock on or</p> <p>6 about November 16th, 2012; is that right?</p> <p>7 A. Yes.</p> <p>8 Q. If you go become to Exhibit No. 11, if you</p> <p>9 look at the page that is Bates stamped ARCHIPEL</p> <p>10 00808 --</p> <p>11 A. Okay.</p> <p>12 Q. So on this page there is a yellow</p> <p>13 highlighting title that says Bloom 2. Under that it</p> <p>14 says 3,160,566.25 raise. What is that?</p> <p>15 A. That is the amount of money we raised</p> <p>16 from investors to invest in Bloom Energy.</p> <p>17 Q. Then under that is negative 2,844,300,</p> <p>18 wire 149,700 shares. What is that?</p> <p>19 A. That would be the amount, the cost,</p> <p>20 associated with the shares purchased.</p> <p>21 Q. Sorry. That means Bloom Energy LP paid</p> <p>22 this amount, the 2.8 million, to purchase this many</p> <p>23 shares, 149,700 shares?</p> <p>24 A. I believe that is accurate, yes. I would</p> <p>25 want to check the spreadsheet on this.</p>	<p>1 was produced to us towards the end of December of last</p> <p>2 year, 2014, so this would have been -- the investor</p> <p>3 information on the second page would have been</p> <p>4 up-to-date as of the date of production; is that</p> <p>5 right?</p> <p>6 A. I believe so. I am not sure what you are</p> <p>7 getting at, but I believe so.</p> <p>8 Q. I am just trying to get a sense of is this</p> <p>9 a list you created in 2009?</p> <p>10 A. No. The investors that you see on</p> <p>11 page -- the investors you see for Bloom Energy on</p> <p>12 page 0800807, all the investors were up to date when</p> <p>13 we produced it for you.</p> <p>14 BY MR. RAWLINGS:</p> <p>15 Q. Aside from Mr. Huang, were there others</p> <p>16 for Bloom Energy?</p> <p>17 A. In 2015?</p> <p>18 Q. Yes.</p> <p>19 A. No.</p> <p>20 BY MS. KIM:</p> <p>21 Q. If you go back to page 808, there is a</p> <p>22 line that says cash, \$237.20 MTB. What does that</p> <p>23 mean?</p> <p>24 A. After all the transactions closed, it</p> <p>25 would be approximately \$237.20 in M&amp;T Bank.</p>
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<p>1 BY MR. RAWLINGS:</p> <p>2 Q. This says Bloom 2, but just pointing to</p> <p>3 the page ARCHIPEL 807, that is the sum for what looks</p> <p>4 to be three separate offerings of Bloom Energy; is</p> <p>5 that correct? Do you see there is one group of</p> <p>6 investors that are 1.5 million --</p> <p>7 A. That is just broken down by year so I</p> <p>8 believe the top investors would have been when we</p> <p>9 started the investment, would be 2012. The next</p> <p>10 group would be 2013, would be 520,000, et cetera.</p> <p>11 2014 would have been the last tranche.</p> <p>12 Q. When you say Bloom 2, is there a Bloom 1</p> <p>13 or --</p> <p>14 A. I don't know why it says Bloom 2, to be</p> <p>15 honest. I don't know that.</p> <p>16 Q. So the investor that you mentioned just</p> <p>17 recently -- I might get his name wrong so I am not</p> <p>18 going to say it --</p> <p>19 A. Huang.</p> <p>20 Q. Huang. He is not on here because as of</p> <p>21 the time you made this sheet he wasn't -- his purchase</p> <p>22 wasn't firm, right?</p> <p>23 A. Yes.</p> <p>24 BY MS. KIM:</p> <p>25 Q. Just for timing purposes, I believe this</p>	<p>1 Q. So MTB is M&amp;T Bank?</p> <p>2 A. MTB is their ticker symbol so I just use</p> <p>3 MTB.</p> <p>4 Q. And then there is a list of expenses here.</p> <p>5 There is \$74,013.94 that goes to legal. Is that Nixon</p> <p>6 Peabody?</p> <p>7 A. Yes.</p> <p>8 Q. And 9,000 for Freed Maxick, that is for</p> <p>9 accounting?</p> <p>10 A. Yes.</p> <p>11 Q. What is CT Corp.?</p> <p>12 A. So we register -- Archipel Capital-Bloom</p> <p>13 Energy registers all of its limited partnerships or</p> <p>14 partnerships in the State of Delaware, and we get an</p> <p>15 annual filing fee and tax notice to file in that</p> <p>16 particular state so even though it says CT, that is</p> <p>17 the name of the actual corporation, but it is</p> <p>18 actually a Delaware tax and filing fee, if you will.</p> <p>19 Q. And then there is an entry for acquisition</p> <p>20 costs, five entries under that totaling \$158,000.74.</p> <p>21 A. That is cumulative of the legal, the</p> <p>22 accounting, the taxes and the acquisition cost. The</p> <p>23 total fee is 158. Not just the acquisition costs.</p> <p>24 Q. What are the acquisition costs, then?</p> <p>25 A. So we would use a third party</p>

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<p>1 intermediary to help us facilitate the transaction to 2 meet our criteria. 3 Q. Who was the third party? 4 A. We have a variety of them. Gentry 5 Financial, Oceanic Ventures, Micro Ventures, Shares 6 Post. 7 BY MR. RAWLINGS: 8 Q. Is this their commission for brokering the 9 transaction? 10 A. Yes. 11 Q. Just getting back to Hane's question about 12 the number of shares and the amount 2.8, I will 13 represent to you that if you take 2,844,300 divided by 14 the number of shares, it comes out to be about \$19 per 15 share. 16 A. Correct. 17 Q. When we were talking before about what the 18 anticipated carry might be on Bloom Energies, do you 19 have any idea what Bloom Energies stock would be 20 trading at now? In other words, if this is -- let's 21 call 19 your basis, the average purchase price. Do 22 you have any idea what Bloom Energies is trading at 23 now? 24 A. Bloom Energy just raised \$160 million in 25 December 2014 at 26.53 so they are going to file -- I</p>	<p>1 A. Okay. 2 Q. What does Lineagen LP invest in? 3 A. We invest in the overall company called 4 Lineagen. 5 Q. I think you said earlier something in the 6 neighborhood of a dollar per share? 7 A. Lineagen stock is a dollar per share, 8 yes. 9 Q. If you are looking at Exhibit 11, which is 10 the spreadsheet that we had spoken about earlier, the 11 first page has a list of the Lineagen LP investors; is 12 that correct? 13 A. Yes. 14 Q. And is this spreadsheet up to date? 15 A. Yes. 16 Q. The second page, similar to what there was 17 with Bloom Energy LP, a page with some numbers and the 18 title is Lineagen; is that right? 19 A. Yes. 20 Q. And the Bates number is, for the record, 21 00806. What is -- does 1,888,876.91 raised mean that 22 that is how much money you have received from 23 investors? 24 A. Yes. 25 Q. And by "you" I mean Lineagen LP has</p>
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<p>1 guess I can tell you. If I can't tell you, I can't 2 tell anybody. 3 Q. Our investigations are confidential. 4 A. They will be filing their S-1 in Q3 of 5 this year. 6 BY MS. KIM: 7 Q. You said there is one investor, the 8 Chinese investor who has been putting in money, in 9 2015 investing in Bloom Energy LP. Have there been 10 any additional purchases of Bloom Energy Corporation 11 shares by Bloom Energy LP in 2015? 12 A. We are about to. We want to wait until 13 March. 14 Q. How many shares will that be? 15 A. Ballpark? 50,000. 16 I am assuming we are going to go on to 17 the next investment, but before we do that, can we 18 take a break? 19 VIDEOGRAPHER: We are now off the record. 20 The time on the video monitor is 3:39 p.m. 21 (A recess was taken.) 22 VIDEOGRAPHER: We are now on the record. 23 The time on the video monitor is 3:52 p.m. 24 Q. So the next Archipel Capital offering that 25 I would like to ask you about is Lineagen LP.</p>	<p>1 received from investors? 2 A. Yes. 3 Q. What does \$1,700,000 wire mean? 4 A. That is the amount we invested or sent 5 Lineagen, the company. 6 Q. MTB is the fifth line down on this page. 7 Is that also M&amp;T Bank? 8 A. Yes. 9 Q. And it says negative \$44,143.85. What 10 does that mean? 11 A. Well, it is just accounting. So it is 12 actually the other way around. So we raised 1.8 and 13 we sent 1.7, our fee, our fee, so on and so forth. 14 Q. When you say "our fee, our fee" do you 15 mean you have a management fee and then the 16 partnership expenses? 17 A. Should be the other way around, meaning 18 that we raised should be the negative, and everything 19 else should be the positives, and it shows the 20 positives, but this one we did the other way around. 21 Sorry. 22 Does that make sense? Do you want me to 23 clarify? 24 So if you take the \$1,700,000 and you add 25 the 94,000, you have 1.794. Then you add that 50 on</p>

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<p style="text-align: right;">Page 181</p> <p>1 top of it and then the cash balance. That is going  2 to come out to 1.88 -- eight seventy six ninety one  3 so in reality if you take the negative sign where it  4 says raise and keep everything else in the positive  5 side, I just -- that one we did it reversed. We did  6 it the true accounting way.  7 Q. And then under expenses there is an entry  8 for Mark Smith, \$5,400. I know earlier you testified  9 that Lineagen the company paid you -- paid Lineagen  10 Limited Partnership who then paid Mark Smith?  11 A. Correct.  12 Q. So how come this \$5,400 is an expense  13 here?  14 A. This is the one that hasn't got  15 reimbursed yet so that has not been updated and  16 corrected.  17 Q. What does Howlett dinner Commission \$3,000  18 mean?  19 A. It is just Howlett dinner. Forget the  20 commission. It's just Howlett dinner.  21 Michael Howlett is the former secretary,  22 ministry secretary in the Province of Ontario. He is  23 a very -- probably the most respected person when it  24 comes to developmental delay in all of Ontario. He  25 was helping Lineagen build -- get these appropriate</p>	<p style="text-align: right;">Page 183</p> <p>1 A. Nothing to do with us.  2 Q. Just out there in the news?  3 A. Yes.  4 Q. Has there been anything similar with  5 Lineagen where the company has been valued?  6 A. Well, they just closed on \$13.3 million  7 so they did a press release, but they just closed on  8 this investment six weeks ago so the company won't be  9 revalued in a sense until either, A, there is an M&amp;A,  10 merger and acquisition, we get acquired by somebody,  11 or, B, we do another round of financing, or, C, we do  12 an IPO.  13 Q. When you say "we," you mean Lineagen the  14 company?  15 A. Yes.  16 MR. LAWRENCE: Just to add context to that  17 for a second, do you actively get involved with  18 working with Lineagen on its business model and  19 executing on its business plan?  20 THE WITNESS: 100 percent, yes.  21 MR. LAWRENCE: What percent of your time  22 do you spend on activities relating to the companies  23 that your LPs are invested in?  24 THE WITNESS: Versus fund raising for new  25 opportunities?</p>
<p style="text-align: right;">Page 182</p> <p>1 government funding to build a lab in the province of  2 Ontario.  3 We sponsored a dinner for his  4 developmental delay charity event that Lineagen  5 partook in; got the name in the brochure, had a table  6 with our name on it, so it is a way we could give  7 back to him for everything he did for us.  8 Q. When you say "we sponsored," you mean  9 Lineagen LP sponsored?  10 A. Yes.  11 Q. I believe you said this partnership closed  12 in December 2014?  13 A. Yes.  14 Q. Have there been any additional expenses  15 since that time?  16 A. There will be, meaning we obviously will  17 have accounting expenses for 2014 incurred in 2015  18 Just some record keeping, miscellaneous  19 Mark Smith payments were still in there for January  20 and February, which got evened out now.  21 Other than that, I don't believe any  22 other expenses, to my knowledge.  23 Q. For Bloom Energy company, you said there  24 has been a different raise, and that was done at \$26  25 and some change?</p>	<p style="text-align: right;">Page 184</p> <p>1 MR. LAWRENCE: Right.  2 THE WITNESS: That's a good question. I  3 would probably say 60 percent of my time is dedicated  4 towards keeping tabs on existing portfolio  5 opportunities, and 20 percent of my time is spent fund  6 raising, 20 percent of my time is other stuff.  7 MR. LAWRENCE: So one of the values that  8 you bring to the LPs is you actually work with and for  9 the portfolio companies?  10 THE WITNESS: Yes. For example, Lineagen  11 LP, as I mentioned earlier, we won Start-Up New York,  12 which gives the company ten years tax free in the  13 State of New York. We have a partnership with  14 Columbia University here in the city to actually  15 handle all of our genetic tests for autism, and then  16 we won them \$250,000 in free grants to hire employees  17 for the State of New York as well.  18 So this is one of our business models  19 similar to Everloop but a success story that we get  20 actively involved in, utilize our relationships with  21 the company and drive the valuation of the company.  22 Q. So Everloop was like that, Lineagen  23 Incorporated is like that, and was there another one  24 that is similar to that model?  25 A. Yeah. I snicker because it was supposed</p>

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<p style="text-align: right;">Page 185</p> <p>1 to be Just Be Friends, but for reasons we don't need 2 to get into right now -- it is not relevant. 3 Q. For the Late Stage Fund LP investment, 4 what does that partnership invest in? 5 A. Has a wide range of opportunities. It is 6 really transitioned over a period of time. Our 7 original intent was to get an allocation in Uber 8 shares, but the criteria gives us a flexibility to 9 invest in Lineagen, Uber, DropBox -- I am drawing 10 blanks on companies now -- the card that you swipe, 11 plug in your card and swipe it -- it is about seven 12 or eight different companies that it gives us the 13 opportunity to invest in. 14 Q. Was that Sellpointe? 15 A. That was is not Sellpointe. It was 16 Square. Sorry. So Square, and then once we reupdate 17 our documents here with our new counsel, we will be 18 adding to that list and having our clients sign 19 addendums to what we are about to do. 20 (Email dated August 8, 2014 marked 21 Exhibit 13.) 22 (Spreadsheet marked Exhibit 14.) 23 Q. I have asked the court reporter to mark 24 Exhibit NY-9143 Exhibit 13. This is an email from you 25 to John Hall dated August 8, 2014, Bates stamped</p>	<p style="text-align: right;">Page 187</p> <p>1 A. No. The transaction never got done. It 2 got ROFR'd away from us. 3 Q. What does that mean? 4 A. Right of first refusal. 5 Q. Can you explain more? 6 A. What the right of first refusal is? A 7 right of first refusal is we entered into a 8 transaction to get the transaction done for the 9 client, and the company wouldn't allow it to go 10 through. 11 Q. These are the execution pages of a stock 12 transfer agreement; is that right? 13 A. Correct, yes. 14 Q. And if you look at the third page, it is 15 also signed by the company? 16 A. It looks so, yes. 17 Q. Did Mr. Hall ask for this attachment? 18 Like why were you sending that to Mr. Hall? 19 A. Originally we intended to give him an 20 allocation -- we intended to give Mr. McEssy an 21 allocation of Uber. Now we are going to be moving 22 that allocation into Lyft. You cannot be an investor 23 into both so we are moving his allocation into Lyft, 24 which is a competitor of Uber. 25 Q. L-Y-F-T?</p>
<p style="text-align: right;">Page 186</p> <p>1 ARCHIPEL 010010 through 13. 2 I have also asked the court reporter to 3 mark as Exhibit 14 a document that is a place holder 4 image on top, which indicates that the document was 5 produced in native, and then I am going to represent 6 that this is a printout of the spreadsheet that was 7 produced in native, and the Bates number for that is 8 ARCHIPEL 002092. 9 Start withing Exhibit 13, what is this 10 email? 11 A. This is an email from myself to John 12 Hall. 13 Q. Who is John Hall? 14 A. John Hall is Bill McEssy's CFO. He also 15 was an investor in Archipel Capital-Social Media 16 Fund, and he also an investor in Archipel 17 Capital-Lineagen LP. 18 Q. If you see, the attachment to this 19 document is Bates ranged ARCHIPEL 010011 through 13 20 Does this -- it looks like these are signature pages 21 for a stock transfer agreement? 22 A. Yes. 23 Q. Did Late Stage Fund LP purchase 175,438 24 shares of common stock of Uber from Thinh Pho, 25 T-H-I-N-H P-H-O?</p>	<p style="text-align: right;">Page 188</p> <p>1 A. Like the competitor -- yeah, L-Y-F-T. 2 Sorry. 3 Q. I think you previously mentioned for Late 4 Stage Fund there would be DropBox, Uber -- 5 A. There will be an addendum. As I 6 mentioned, once we have new counsel in place, either 7 Vedder &amp; Price this week and/or Barnes &amp; Thornberg 8 this week, we will be sending out an addendum for our 9 investors to sign off on. 10 Actually, Spotify may have been in the 11 late stage docs as well. We are making an investment 12 in Spotify as well. I believe Spotify was, but I 13 can't be certain for sure. 14 BY MR. RAWLINGS: 15 Q. How does the right of first refusal impact 16 the stock transfer agreement? 17 A. It doesn't go through. 18 Q. Is that something that -- I just didn't 19 see anything in here that sort of refers to a right of 20 first refusal. 21 A. Uber is very, very tricky. What I mean 22 by that is -- and I may get this backwards, so I 23 apologize in advance. It is one of two ways. 24 Uber is called -- I want to get this 25 right. Uber was originally called Uber Technologies,</p>

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<p>1 and there are a series of investors in Uber 2 Technologies that had the ability to transfer their 3 shares. The new name of the company might just be 4 Uber Inc. 5 Q. We are talking about the card service? 6 A. Yes. 7 Q. I want to make sure we are talking about 8 the same thing. 9 A. Uber Inc. does not allow the ability to 10 transfer shares. 11 So Uber Technologies was created 12 2010ish. 2012, they rolled over Uber Technologies 13 into Uber Inc. The investors in Uber Technologies 14 had the ability to transfer shares, small 15 conglomerate of investors. Those are the investor 16 shares we intended to purchase our shares from. 17 Q. Sorry. What was the time? When did Uber 18 Technologies become Uber Inc.? 19 A. I believe 2012, but I want to double 20 check. 21 At that point in time we tried many 22 different ways to try to get access to Uber shares at 23 a valuation all over the place. 24 Originally we discussed valuation around 25 six, seven -- call it seven. Now Uber is at</p>	<p>1 Q. And the understanding was -- you are 2 sending this on August 08, but it is dated July 7th, 3 July 7th, 2014? 4 A. Yes. 5 Q. So the second page, that is your signature 6 there, right? 7 A. Correct. 8 Q. From Archipel Capital-Late Stage Fund. On 9 July 7th, 2014 you had entered into a transaction with 10 whoever the seller is to purchase 175,438 shares of 11 common stock on that date, right? 12 A. Yes. 13 Q. And seller, I guess, Thinh Pho, do you 14 know who that is? 15 A. No. 16 Q. But then -- so from your state of mind 17 when you sent that to Mr. Hall, you thought the 18 subject matter is executed -- you thought you had a 19 sale of shares, correct? 20 A. Yes. 21 Q. But then later on Uber comes in over the 22 top and says "Well, whatever price you are willing to 23 pay, we are going to pay more than that and we're 24 taking those shares"? 25 A. Actually, believe it or not, it is the</p>
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<p>1 \$44 billion so it has gone through the roof. 2 Uber Inc., if I don't have this 3 backwards, is not allowing any transactions to go 4 through, and they buy out -- they go through the 5 process, try to go through the process, and then they 6 actually buy out their investors, if you will -- 7 their employees. 8 Unlike Bloom Energy where we have 9 employees selling their stock to us, we have never 10 had our shares ROFR'd away from Bloom or Twitter, for 11 example. Uber, this transaction, got ROFR'd. 12 Q. What was the last word? 13 A. Right of first refusal. 14 Q. So that is short for right of first 15 refusal away? 16 A. So the shares got ROFR'd away. 17 Q. When did that happen, approximately? It 18 doesn't have to be exact. 19 A. October'ish, November'ish. 20 Q. At the time when you are sending that to 21 Mr. Gray in -- sorry. At the time you are sending 22 this to Mr. Hall in 2014, was it your understanding 23 that you had entered into a stock transfer agreement 24 to get Uber shares? 25 A. Yes.</p>	<p>1 other way around. 2 Q. How -- what way is it? 3 A. Uber is buying the shares from their 4 employees at 10 billion valuation. 5 Q. At \$10 billion? 6 A. Valuation, and we were getting shares -- 7 we were willing to pay the seller more than that so 8 Uber is actually, in my opinion, doing their 9 employees a disjustice and service, but that's just 10 me. 11 So that is Uber basically using their war 12 chest, if you will, to their advantage. 13 Q. Got it. 14 A. But they have executed a great business 15 model so good for them. 16 BY MS. KIM: 17 Q. And then if you turn to Exhibit 14, this 18 is -- looks like a similar spreadsheet to the earlier 19 one I showed you for Bloom, Lineagen and Agrivida, the 20 entities, the Archipel Capital entities, Exhibit 11. 21 Is this a list of the investors in Late Stage Fund? 22 A. Yes. 23 Q. If you turn to the first page -- sorry -- 24 the second page, so not the place holder page but the 25 first page of the spreadsheet, this has a title that</p>

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<p>1 says LSF. Does that mean Late Stage Fund?</p> <p>2 A. Yes.</p> <p>3 Q. And this provides some numbers and it</p> <p>4 looks similar to what we saw for Bloom Energy LP and</p> <p>5 Lineagen LP, right?</p> <p>6 A. Yes.</p> <p>7 Q. So the \$6,020,640 raised, is that how much</p> <p>8 Late Stage Fund LP has raised from investors?</p> <p>9 A. Yes.</p> <p>10 Q. Have there been any additional investors</p> <p>11 since this list was created?</p> <p>12 A. No.</p> <p>13 Q. And then the second line says negative</p> <p>14 \$5 million wire. What does that mean?</p> <p>15 A. Those are investments we funded.</p> <p>16 Q. Where did they go?</p> <p>17 A. Bloom, Lyft, Spotify.</p> <p>18 Q. So you have already funded investments</p> <p>19 into Bloom Corporation -- Bloom Energy Corporation,</p> <p>20 Lyft the company and Spotify the company?</p> <p>21 A. Or entities that hold those investments.</p> <p>22 Q. What does that mean?</p> <p>23 A. So when we did Bloom Energy, we looked at</p> <p>24 that -- you asked me about the acquisition cost on</p> <p>25 Bloom, and you asked me who got those moneys. Those</p>	<p>1 Stage Fund LP would be updating the private placement</p> <p>2 memorandum?</p> <p>3 A. Yes.</p> <p>4 Q. To account for some of these other</p> <p>5 companies?</p> <p>6 A. Yes.</p> <p>7 Q. Why wasn't the private placement</p> <p>8 memorandum updated before you invested?</p> <p>9 A. Time constraints. I have emails from</p> <p>10 every investor about what our intentions are, and</p> <p>11 just because at the end of the day we are up against</p> <p>12 the clock to get these transactions closed and so</p> <p>13 please send me an email you are okay with this</p> <p>14 allocation. Everyone is okay with the allocation.</p> <p>15 BY MR. RAWLINGS:</p> <p>16 Q. The investors you are referring to are the</p> <p>17 ones on the second page?</p> <p>18 A. Yes.</p> <p>19 Q. Andrew Ciccone and Beverly Ciccone.</p> <p>20 BY MS. KIM:</p> <p>21 Q. What is Cellar Door investment?</p> <p>22 A. They are an investment arm out of Utah.</p> <p>23 I don't know what city. Sorry. My brain is getting</p> <p>24 fried. They are out of Utah.</p> <p>25 Q. And the investors for Late Stage Fund</p>
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<p>1 are investments we made with our partner -- what we</p> <p>2 consider our partners so they would have an entity</p> <p>3 that had already established an investment into Lyft,</p> <p>4 for example, so we would invest directly into them as</p> <p>5 they have invested directly into us in the past.</p> <p>6 BY MR. RAWLINGS:</p> <p>7 Q. What entities were those again? Were</p> <p>8 those were the entities you listed on the -- so what</p> <p>9 sort of entities would it be that you hold, for</p> <p>10 example, Spotify shares through?</p> <p>11 A. The name of it?</p> <p>12 Q. Yes.</p> <p>13 A. That would be Gentry Financial something.</p> <p>14 Lyft was Oceanic Ventures Series I or something.</p> <p>15 Q. So it is Gentry Financial fund, and does</p> <p>16 that fund own Spotify and other stocks or just solely</p> <p>17 dedicated to Spotify?</p> <p>18 A. That Gentry and Oceanic have special</p> <p>19 purpose entities solely for -- Gentry is for Spotify,</p> <p>20 Oceanic is for Lyft.</p> <p>21 Q. Got it.</p> <p>22 A. And we will be doing a much larger</p> <p>23 investment in Lyft here shortly.</p> <p>24 BY MS. KIM:</p> <p>25 Q. You said you were planning on the Late</p>	<p>1 other than Mr. McEssy, they haven't invested with</p> <p>2 Archipel Capital before?</p> <p>3 A. Correct.</p> <p>4 Q. And how did you -- how did you get in</p> <p>5 touch with them?</p> <p>6 A. So Sellpointe you mentioned earlier, the</p> <p>7 CEO of Sellpointe is a gentleman named Brian O'Keefe.</p> <p>8 Brian and I have worked together for 10 years. He</p> <p>9 was a former investment banker with me at Advanced</p> <p>10 Equities. He was then an investment banker at a</p> <p>11 company called Pharus, P-H-A-R-U-S, Advisors who</p> <p>12 helped us secure shares in Twitter, and then he took</p> <p>13 over his CEO position of Sellpointe.</p> <p>14 Brian O'Keefe's cousin is a gentleman</p> <p>15 named Sean Thomas who runs Cellar Door Investments</p> <p>16 From there Cellar Door Investments had their own LLC</p> <p>17 to invest in our deal flow, had a few people wanted</p> <p>18 to invest directly, and then from there we had</p> <p>19 referrals from those investors as well.</p> <p>20 Q. Is Cellar Door Investment a -- were they</p> <p>21 paid to refer people?</p> <p>22 A. They have not been paid as of yet, no.</p> <p>23 Q. Is the idea that they will be paid</p> <p>24 eventually?</p> <p>25 A. We are in discussions with it.</p>

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<p style="text-align: right;">Page 197</p> <p>1 Q. And Brian O'Keefe is on your advisory 2 board, right? 3 A. Yes. That we will be updating in 2015 4 too. He is the CEO of a company now that is making 5 it a little conflicting for him because they are 6 going to be going public, so we will be updating when 7 we are allowed to update. I don't know what the 8 proper term is. But in the next month we will be 9 updating that just to give him greater flexibility, 10 if you will, with you guys when he files his S-1. 11 Q. Updating what? 12 A. We will be removing Brian from our 13 advisory board so he doesn't have to disclose it when 14 he files to the public. 15 BY MR. RAWLINGS: 16 Q. Before Hane moves on to the next topic, I 17 just wanted to ask sort of a sweep-up topic that deals 18 with a topic two topics again. 19 We talked about discussions you had with 20 Nixon Peabody related to your disciplinary history. 21 Hilary DeCesare asked you about your 22 disciplinary history. Were there any conversations 23 with Bloom Energies or any executives at Bloom 24 Energies about your disciplinary history, prior 25 disciplinary history?</p>	<p style="text-align: right;">Page 199</p> <p>1 there conversations about your disciplinary history in 2 which Nixon Peabody was a party where they knew that 3 Lineagen knew about your disciplinary history? 4 A. Let me just make sure I -- were there 5 conversations I had with Lineagen that Nixon Peabody 6 knew about that I disclosed my sanctions to them? 7 Q. Um hum. 8 A. I don't believe so, no. 9 Q. Also, I just want to -- did Nixon Peabody 10 also help you negotiate sale purchases? In other 11 words, Nixon Peabody has been putting PPM documents 12 together. When you would then go like Hane showed 13 you, the Bloomberg -- not the Bloomberg -- the Bloom 14 stock certificate, did Nixon help you in those 15 transactions to sort of acquire those shares? 16 A. So I think this answers your question. 17 They didn't help us find a buyer -- sorry -- find a 18 seller so when we closed with Bloom Energy, Twitter, 19 whatever the case may be, there is -- I am going to 20 use an example. Bloom's Energy's counsel is Fenwick 21 &amp; West, large law firm in California. 22 Nixon Peabody is on our side. 23 Sometimes the seller has counsel, 24 sometimes they don't. 25 And there is a similar typical business</p>
<p style="text-align: right;">Page 198</p> <p>1 A. The answer is no. I don't know any 2 executives at Bloom Energy. 3 Again, breaking down our business model 4 into two, I believe we were actively involved in, 5 helped that company, got intimately involved -- not 6 intimately -- we got involved with the company and 7 helped use our -- used our relationships to drive 8 that company. Same thing on Lineagen. 9 So Hilary DeCesare is aware, was aware of 10 my past issues with the SEC, and Dr. Michael Paul, 11 the CEO of Lineagen, is also aware, as is the board 12 of Lineagen. 13 The other companies such as Twitter, I 14 don't know Dick Costello from Adam. I don't, 15 obviously, so I can't call him on the phone and just 16 say "Hey, we are investing in your company. Do you 17 know about my past?" 18 That was we used our relationships to get 19 access to those companies. 20 Same thing with Bloom, so on and so 21 forth. 22 Q. What I want to get, how about -- so if I 23 were to ask you do you recall any conversations with 24 people from other -- well, Lineagen you said knew 25 about your disciplinary history. Do you know, were</p>	<p style="text-align: right;">Page 200</p> <p>1 stock transfer agreement. "Hey, you are buying. 2 Here are these shares, this price," so on and so 3 forth. 4 Nixon Peabody would read those documents 5 and "They are okay. We don't have an issue with 6 them." 7 If that is what you mean by -- does that 8 answer your question? So they were at the closing 9 table with us to close the transaction, if you will. 10 Q. Right. So they were your counsel to help 11 you acquire shares of the companies when you would go 12 out and get them, correct? 13 A. Correct, yes. 14 Q. For example, the Social Media Fund when 15 you are out buying shares of Twitter, did you use 16 Nixon Peabody to help you buy the shares of Twitter? 17 A. Yes. 18 Q. Did any purchasers or sellers of shares to 19 you ever reference your disciplinary history at all? 20 A. Not that I am aware. I don't recall. 21 Q. You used this other counsel for the 22 Agrivida LLC. Say when you were working on a 23 particular offering like Bloom and Nixon is helping 24 you get the shares of Bloom, was there any other law 25 firms that you might use to help acquire shares of</p>

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<p>1 Bloom, or it would always be Nixon?</p> <p>2 A. For Bloom it would always be Nixon.</p> <p>3 Q. What about say the Social Media Fund; was</p> <p>4 it always Nixon helping you get the Twitter shares?</p> <p>5 A. Yes. Twitter had, call it what you want,</p> <p>6 they had a -- Twitter took a fee to do a share</p> <p>7 transfer so there were fees we had to pay. Sometimes</p> <p>8 certain agreements asked for us to pay the seller's</p> <p>9 counsel, like Holland &amp; Knight for example, was a law</p> <p>10 firm. So we would have to -- in order to get the</p> <p>11 Twitter shares, we would agree to pay the seller's</p> <p>12 counsel's fees in the transaction.</p> <p>13 Twitter had an administrative fee, if you</p> <p>14 will, to change the stock from seller's name to our</p> <p>15 name for, I think it is, \$5,000; might have been 15.</p> <p>16 I don't remember, to be honest with you.</p> <p>17 Does that answer -- is that what you are</p> <p>18 looking for?</p> <p>19 Q. I guess. I guess what I am looking for is</p> <p>20 so those transactions required legal representation in</p> <p>21 some instances, but it would always be Nixon who did</p> <p>22 it?</p> <p>23 A. On our side, yes.</p> <p>24 Q. On your side, right. Would Nixon have any</p> <p>25 reason to think you had some other law firm working on</p>	<p>1 Exhibit 15.)</p> <p>2 Q. I am showing you what the court reporter</p> <p>3 has marked as NY-9143 Exhibit 15, Bates stamped</p> <p>4 ARCHIPEL 01103 through 104. Do you recognize this</p> <p>5 document?</p> <p>6 A. Yes.</p> <p>7 Q. This reflects that Archipel</p> <p>8 Capital-Agrivida LLC owns 105,853 shares of Series B</p> <p>9 Plus preferred stock of Agrivida Inc.; is that</p> <p>10 correct?</p> <p>11 A. Yes.</p> <p>12 Q. And this certificate is dated June 27th,</p> <p>13 2012?</p> <p>14 A. Yes.</p> <p>15 Q. So on or about that time the Agrivida LLC</p> <p>16 owned these shares?</p> <p>17 A. Yes.</p> <p>18 BY MR. RAWLINGS:</p> <p>19 Q. Agrivida is another one of those companies</p> <p>20 that hasn't had a liquidity event?</p> <p>21 A. Yes.</p> <p>22 Q. Do you know what the Agrivida shares</p> <p>23 are -- do you know what they are trading at now?</p> <p>24 A. They are actively involved in a financing</p> <p>25 as we speak. The lead VC -- I can't remember the</p>
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<p>1 those transactions?</p> <p>2 A. Not to my knowledge, no.</p> <p>3 Q. Okay.</p> <p>4 BY MS. KIM:</p> <p>5 Q. And for the Agrivida transaction, was it</p> <p>6 Green &amp; Seifter that represented you on that</p> <p>7 transaction?</p> <p>8 A. On the Agrivida closing? Yes.</p> <p>9 Q. So the closing like where Agrivida LLC</p> <p>10 purchased from Agrivida Incorporated?</p> <p>11 A. So Agrivida was different in a sense that</p> <p>12 was a true round of financing so Twitter, Bloom, Lyft</p> <p>13 in its current state, Spotify in its current state</p> <p>14 are all secondary transactions.</p> <p>15 The firm, as I mentioned earlier, Bloom</p> <p>16 is in a \$160 million raise. That is a true raise, so</p> <p>17 Agrivida when we invested in them was actually doing</p> <p>18 a true round of financing so we participated in that</p> <p>19 preferred round of financing so we had pref shares of</p> <p>20 Agrivida.</p> <p>21 At that point in time we were working</p> <p>22 directly with their lead venture capital firms and</p> <p>23 the company itself to issue us our stock.</p> <p>24 MS. KIM: Mark this one.</p> <p>25 (Agrivida stock certificate marked</p>	<p>1 name of them -- anyway, they have not put a value.</p> <p>2 They are going to the marketplace right now.</p> <p>3 Q. Got it.</p> <p>4 A. I can tell you -- I can't see if that is</p> <p>5 B or B plus, whatever round.</p> <p>6 So when we invested, we invested at a</p> <p>7 pre-money valuation of about \$47 million. There was</p> <p>8 a round after our round which was then at</p> <p>9 \$74 million, and then this round is going to be a</p> <p>10 down round. I just don't know at what valuation.</p> <p>11 Q. Got it.</p> <p>12 MR. RAWLINGS: Off the record for one</p> <p>13 minute.</p> <p>14 VIDEOGRAPHER: We are now off the record.</p> <p>15 The time on the video monitor is 4:29 p.m.</p> <p>16 (Discussion off the record.)</p> <p>17 VIDEOGRAPHER: We are now on the record.</p> <p>18 The time on the video monitor is 4:31 p.m.</p> <p>19 BY MR. SUTHAMMANONT:</p> <p>20 Q. I am going to ask you some questions about</p> <p>21 Everloop. You mentioned earlier in your testimony</p> <p>22 investor presentations with Hilary DeCesare and I</p> <p>23 think Anthony Russo and --</p> <p>24 A. Andrew.</p> <p>25 Q. Andy. Sorry. Thank you.</p>

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<p>1 Generally, who was at those presentations</p> <p>2 in terms of pitching the investors?</p> <p>3 A. On our side or --</p> <p>4 Q. On your side.</p> <p>5 A. Usually it would be in Syracuse it would</p> <p>6 be Andrew Russo, Ryan McMahon, Devin Stelljes and</p> <p>7 myself.</p> <p>8 Q. And I think you mentioned earlier that Ms.</p> <p>9 DeCesare did most of the talking at those</p> <p>10 presentations?</p> <p>11 A. Yes.</p> <p>12 Q. And before she would make those</p> <p>13 presentations, would she discuss with you what she was</p> <p>14 going to say or how she was going to pitch the</p> <p>15 investment into the company?</p> <p>16 A. Hilary is a very independent woman,</p> <p>17 smart, sophisticated, articulate. She had her own</p> <p>18 agenda.</p> <p>19 Q. How did you meet Ms. DeCesare?</p> <p>20 A. Actually, my chairman Greg Edwards saw</p> <p>21 her present in Silicon Valley approximately February</p> <p>22 2011, pulled her aside, said "I love what you are</p> <p>23 doing about the company. I want to personally invest</p> <p>24 in your seed round," which he did, "and I would like</p> <p>25 to talk to you about taking an investment from" -- he</p>	<p>1 here, a document we can mark.</p> <p>2 (Email dated July 21, 2011 marked</p> <p>3 Exhibit 17.)</p> <p>4 Q. While you are reviewing that document, I</p> <p>5 will describe it for the record. It is an email from</p> <p>6 you to Bill Schrimpf on July 21st, 2011. The Bates</p> <p>7 number is ARCHIPEL 009142. Do you recognize this</p> <p>8 email?</p> <p>9 A. I do, yes.</p> <p>10 Q. And on this email it describes Bill</p> <p>11 Thompson as the president of i-SAFE. Was he the</p> <p>12 president of i-SAFE?</p> <p>13 Withdrawn. Let me ask you this question.</p> <p>14 How did you learn the information that you put here</p> <p>15 next to Bill Thompson's name?</p> <p>16 A. We received this information from Hilary</p> <p>17 DeCesare.</p> <p>18 Q. And how did you receive this information</p> <p>19 from her?</p> <p>20 A. In our discussions before we made an</p> <p>21 investment into Everloop, we made it clear to Hilary</p> <p>22 and Everloop's board we are a co-investment firm, and</p> <p>23 that Bill Thompson would put together a syndicate of</p> <p>24 his own monies, and he would be on-boarding his</p> <p>25 relationship with the i-SAFE school systems.</p>
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<p>1 said Archipel Capital, but, you know (inaudible).</p> <p>2 MR. SUTHAMMANONT: I want to mark an</p> <p>3 exhibit here. What are up to? 16.</p> <p>4 (Email dated April 25, 2011 marked</p> <p>5 Exhibit 16.)</p> <p>6 Q. While you are reviewing, I will describe</p> <p>7 it for the record. It's is an email from Greg</p> <p>8 Edwards, an email chain, the last of which is an email</p> <p>9 from Greg Edwards to Hilary DeCesare and someone named</p> <p>10 Bill Mac on April 25, 2011, and the Bates number is</p> <p>11 ARCHIPEL 025727.</p> <p>12 We have this from your production. Do</p> <p>13 you recall receiving this email in some fashion</p> <p>14 before?</p> <p>15 A. Yes.</p> <p>16 Q. Who is Bill Mac?</p> <p>17 A. A gentleman named Bill Thompson. I don't</p> <p>18 know why he goes by Bill Mac, but it is Bill</p> <p>19 Thompson. He -- Bill Thompson.</p> <p>20 Q. What was Bill Thompson's relation to</p> <p>21 Everloop?</p> <p>22 A. Bill Thompson was supposed to be the lead</p> <p>23 investor or bring together monies to be the lead</p> <p>24 investor in Everloop once we came into play.</p> <p>25 Q. I am going to show you another exhibit</p>	<p>1 Q. It says here manager of the Walton Walmart</p> <p>2 family monies. Is that something you heard from Ms.</p> <p>3 DeCesare?</p> <p>4 A. Yes.</p> <p>5 Q. Did you ever speak to Mr. Thompson?</p> <p>6 A. Yes.</p> <p>7 Q. In 2011?</p> <p>8 A. I believe Greg Edwards and I did a</p> <p>9 conference call with Bill Thompson in 2011.</p> <p>10 Q. Is it -- would he have mentioned this as</p> <p>11 well in the conference call?</p> <p>12 MR. SUTHAMMANONT: Withdrawn.</p> <p>13 Q. What was the conference call about?</p> <p>14 A. Just to get familiar with our due</p> <p>15 diligence, that there are going to be other monies in</p> <p>16 Everloop, and what criteria around it that we were</p> <p>17 not swimming in a boat without a paddle, if you will.</p> <p>18 Sorry. I won't do that again.</p> <p>19 MR. SUTHAMMANONT: I am going to mark</p> <p>20 another document.</p> <p>21 (Email dated June 30, 2013 marked</p> <p>22 Exhibit 18.)</p> <p>23 Q. You have been handed what has been marked</p> <p>24 Exhibit 18, an email from Andrew Russo to you on</p> <p>25 June 30th, 2013, and as you review it, the Bates</p>

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<p style="text-align: right;">Page 209</p> <p>1 number is ARCHIPEL 008753. Do you recognize this 2 email chain? 3 A. I do, yes. 4 Q. In it you discuss Mr. Thompson, correct? 5 A. Yes. 6 Q. Does this help refresh your recollection 7 as all in terms of what, if anything, Mr. Thompson 8 told you or promised as you mentioned down here on the 9 June 30th email at 8:00 p.m. in this email chain? 10 MR. LAWRENCE: I'm sorry, counsel. If I 11 could just have a minute because I have never seen 12 this. Do you mind? 13 MR. SUTHAMMANONT: Sure. 14 (Pause in the proceedings.) 15 A. Can I ask a question of my counsel? You 16 may not know the answer. 17 MR. LAWRENCE: Does it involve 18 attorney-client privilege? 19 THE WITNESS: No. 20 MR. LAWRENCE: Then just answer his 21 question. 22 Sorry. I put a halt to the proceedings. 23 Just -- sorry. 24 MR. SUTHAMMANONT: I withdraw my question 25 for the record.</p>	<p style="text-align: right;">Page 211</p> <p>1 Q. Now, the second sentence in that says that 2 he runs money for the family of Walmart and Russell 3 Simmons, and I assume that Russell Simmons means 4 Russell Simmons the celebrity? 5 A. Yes. 6 Q. Do you recall when he said that? 7 A. That was Hilary DeCesare telling us that. 8 Q. Do you recall when she told you that? 9 A. Again, prior -- I want to say prior to us 10 investing or very close thereabouts. 11 Q. And the last line of that same paragraph 12 says "He was the one who overhyped the i-SAFE 13 potential." 14 A. I don't want to say the only reason, but 15 in the presentation that Hilary DeCesare gave to 16 Silicon Valley in February 2011 that Greg Edwards saw 17 in the seed round, her claim to fame in that pitch, 18 if you will, was creating a social network compliant 19 for kids, and her entrance to get many, many, many 20 users is getting school systems onboard, and that she 21 had this signed, sealed, delivered relationship with 22 i-SAFE, the school system, a nonprofit i-SAFE, to get 23 access to, I want to say, 56,000 schools. 24 So prior to us investing we had the 25 document showing the signed partnership between</p>
<p style="text-align: right;">Page 210</p> <p>1 Q. In the -- there is a June 30, 8:00 p.m. 2 email from you where it says Gregory W. Gray Jr. It 3 says "We invested because of Bill Thompson. He 4 promised on multiple occasions as did Hilary that he 5 would invest \$5 million into Everloop." 6 My question is about that statement 7 there, which is when did -- first of all, did they in 8 fact say that? 9 A. Did Bill Thompson and Hilary say -- 10 Q. Say that Bill would invest \$5 million into 11 Everloop. 12 A. Many, many, many times. 13 Q. Do you recall the first time he said that? 14 You could break it into each of them. 15 A. Prior to us investing one dollar, prior 16 to Bennington Everloop Limited Partnership investing 17 one dollar into Everloop, Everloop the entity. 18 Q. Who told you they were going to invest 19 first; was it Ms. DeCesare or Mr. Thompson? 20 A. I can't say for certain. I would presume 21 Ms. DeCesare, because we spoke with her daily, where 22 I believe we only had one phone call with 23 Mr. Thompson prior to -- 24 Q. Investing? 25 A. Right.</p>	<p style="text-align: right;">Page 212</p> <p>1 Everloop, i-SAFE, and we also felt comfortable 2 because Bill Thompson was, I want to say, president 3 or -- I don't recall exactly, but I want to say he 4 was the president of i-SAFE for profit or something 5 along that line that gave us comfort that if Bill 6 Thompson here that was going to be a board member -- 7 I don't think he ever turned out to be a board 8 member -- with Hilary DeCesare in a signed contract 9 showing their entrance into i-SAFE for 56,000 10 schools, where I could be all the money on the table, 11 there is going to be another investor coming in to be 12 the lead with a co, which is what we do, and we felt 13 comfortable taking that leap of faith because we will 14 be the first money in, Bill Thompson is going to 15 raise money for his fund. He's got Walmart, Russell 16 Simmons, et cetera. They are going to close the fund 17 at the end of 2011, and then we are off to the races, 18 good to go. 19 Q. Do you recall ever, just taking it person 20 by person, do you recall whether you yourself ever 21 passed this information about the other investors in 22 Everloop, meaning the Waitons or Russell Simmons, or 23 whoever, to investors that you were bringing in? 24 A. Did I? 25 Q. Correct.</p>

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<p>1 A. I don't believe I ever did.</p> <p>2 Q. Do you know if Devin Stelljes ever did?</p> <p>3 A. I believe Devin has, yes.</p> <p>4 Q. Why do you believe that?</p> <p>5 A. When Andy Russo was the CFO of Everloop</p> <p>6 when this was written, and a period when Everloop</p> <p>7 started going south, so right around here, there was</p> <p>8 a big battle now between Hilary DeCesare and Andrew</p> <p>9 Russo.</p> <p>10 Andrew Russo produced a doc -- produced a</p> <p>11 document to me saying "Hey, have you seen this</p> <p>12 document?"</p> <p>13 And I don't remember seeing the document.</p> <p>14 He said "But Devin produced it."</p> <p>15 I said "Well, I wouldn't say that</p> <p>16 either."</p> <p>17 Then it turns out that supposably,</p> <p>18 allegedly, Hilary DeCesare called me -- again, we</p> <p>19 were not on talking terms at this point in time</p> <p>20 between Hilary and I -- Hilary called me and said</p> <p>21 "Andy Russo is changing documents within our Dropbox</p> <p>22 criteria to reflect improper dealings."</p> <p>23 So at the end of the day, I don't know</p> <p>24 if -- I know the document you are referring to. Andy</p> <p>25 Russo brought it to my attention in '13. I told him</p>	<p>1 a threatened dispute with Everloop, when Bennington</p> <p>2 Everloop LLP threatened some kind of action against</p> <p>3 Everloop Inc.?</p> <p>4 A. Yes.</p> <p>5 Q. How did that resolve? Without revealing</p> <p>6 any kind of attorney-client privilege.</p> <p>7 MR. LAWRENCE: He may also be under a</p> <p>8 confidentiality agreement, because I believe there was</p> <p>9 a settlement reached.</p> <p>10 I have no -- probably a lot less than</p> <p>11 everyone in the room about this, but I know enough to</p> <p>12 know that it certainly is sensitive from a disclosure</p> <p>13 perspective.</p> <p>14 First off, don't convey any communications</p> <p>15 that you had privately with your attorneys regarding</p> <p>16 this.</p> <p>17 Secondly, I think -- are you aware whether</p> <p>18 there was a confidentiality agreement to the</p> <p>19 settlement?</p> <p>20 MR. SUTHAMMANONT: I am aware there has</p> <p>21 been a position taken that it would not apply in this</p> <p>22 circumstance where there is a subpoena on the table.</p> <p>23 MR. LAWRENCE: So that we wouldn't have to</p> <p>24 produce anymore?</p> <p>25 MR. SUTHAMMANONT: That is my</p>
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<p>1 I have never seen it. Devin said he didn't produce</p> <p>2 it.</p> <p>3 All I know is that Hilary claimed that</p> <p>4 Andy was changing files that only had access in the</p> <p>5 Everloop hard driver iCloud, if you will, for</p> <p>6 Everloop.</p> <p>7 Q. During the investor presentations -- so</p> <p>8 now I asked you about you, Mr. Stelljes -- did Ms.</p> <p>9 DeCesare ever mention any of these facts to the</p> <p>10 investors during the presentations?</p> <p>11 A. I-SAFE?</p> <p>12 Q. Not i-SAFE, the other co-investors; for</p> <p>13 example the Walton family, Russell Simmons.</p> <p>14 A. Well, the Walton family would have come</p> <p>15 in through Bill Thompson, so she would always refer</p> <p>16 to Bill Thompson, which was Predictive Edge -- so</p> <p>17 Bill Thompson ran a firm called Predictive Edge.</p> <p>18 Predictive Edge was always in Hilary's presentations</p> <p>19 as the other investor.</p> <p>20 Q. I see. Okay.</p> <p>21 A. So those would be his limited -- I'm</p> <p>22 sorry to interrupt you -- Russell Simmons and the</p> <p>23 Waltons would be limited partners in Predictive Edge</p> <p>24 so we thought.</p> <p>25 Q. There came a time, correct, when there was</p>	<p>1 understanding. I myself have not seen the agreement</p> <p>2 MR. RAWLINGS: Let's go off the record.</p> <p>3 VIDEOGRAPHER: We are now off the record.</p> <p>4 The time on the video monitor is 4:46 p.m.</p> <p>5 (Discussion off the record.)</p> <p>6 VIDEOGRAPHER: We are now on the record.</p> <p>7 The time on the video monitor is 4:47 p.m.</p> <p>8 MR. SUTHAMMANONT: These are the same</p> <p>9 document. One is printed from native.</p> <p>10 (Email marked Exhibit 19.)</p> <p>11 MR. SUTHAMMANONT: In order to show the</p> <p>12 blank carbon copies I printed the unstapled page from</p> <p>13 the native document.</p> <p>14 A. So this is the same thing?</p> <p>15 Q. Correct. It is the same email. One has</p> <p>16 the attachment. One is just the face email showing</p> <p>17 the blank carbon copy addresses. I am only going to</p> <p>18 ask you about the email with the stapled attachment to</p> <p>19 it, which is, for the record, ARCHIPEL 012017. It is</p> <p>20 an email from Mr. Gray to a bunch of blind-copied</p> <p>21 recipients.</p> <p>22 With respect to that first paragraph</p> <p>23 there -- and this email was produced to us -- you</p> <p>24 mention that BELP received a settlement --</p> <p>25 MR. LAWRENCE: Sorry. Can we talk for a</p>

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<p>1 second?</p> <p>2 MR. SUTHAMMANONT: Of course.</p> <p>3 MR. LAWRENCE: I think this might be</p> <p>4 something that was produced in error as well, that the</p> <p>5 result of this -- this is subject to a clawback.</p> <p>6 I'm sorry, but I am just trying to respect</p> <p>7 everything that he is doing, and sometimes these</p> <p>8 things slip through the crack.</p> <p>9 There was one document, for example, that</p> <p>10 we found that slipped through the crack.</p> <p>11 I think this might be privileged, and I</p> <p>12 would like a chance to evaluate that and get back to</p> <p>13 staff on that.</p> <p>14 MR. RAWLINGS: That is absolutely fine.</p> <p>15 Actually, while the testimony is still</p> <p>16 open, court reporter, are you allowed to take 19 out</p> <p>17 of the record at this point? Because it has been</p> <p>18 entered as an exhibit.</p> <p>19 VIDEOGRAPHER: We are now off the record</p> <p>20 The time on the video monitor is 4:50 p.m.</p> <p>21 (Discussion off the record.)</p> <p>22 VIDEOGRAPHER: We are now on the record.</p> <p>23 The time on the video monitor is 4:50 p.m.</p> <p>24 MR. RAWLINGS: For the record, if you</p> <p>25 could hand me back Exhibit 19, hand it to me.</p>	<p>1 It is 4:51. If we go to 5:10, is that</p> <p>2 okay?</p> <p>3 THE WITNESS: Can I ask -- not off the</p> <p>4 record, but to get to LaGuardia from here, hour, this</p> <p>5 time of day?</p> <p>6 MR. RAWLINGS: In a car it will probably</p> <p>7 be about an hour and 15.</p> <p>8 MR. LAWRENCE: If you have to sleep at</p> <p>9 my --</p> <p>10 THE WITNESS: Sorry.</p> <p>11 BY MS. KIM:</p> <p>12 Q. We have discussed in the past Archipel</p> <p>13 Capital-Social Media Fund LP, and I believe you</p> <p>14 testified earlier there were four, so I, II, III and</p> <p>15 IV; is that correct?</p> <p>16 A. Yes.</p> <p>17 Q. Can you explain what the differences were</p> <p>18 with I, II, III and IV?</p> <p>19 A. I, II and III were the same; IV just had</p> <p>20 a higher average share price.</p> <p>21 Q. What was -- what was the share price for</p> <p>22 I, II and III?</p> <p>23 A. I believe 19.03, approximately.</p> <p>24 Q. And what about IV?</p> <p>25 A. 25.50.</p>
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<p>1 I am just representing to counsel we are</p> <p>2 putting it in this folder, and I am giving it to this</p> <p>3 intern here, and we are not going to look at it</p> <p>4 anymore until you resolve the issue of whether or not</p> <p>5 it is privileged.</p> <p>6 MR. LAWRENCE: I appreciate it.</p> <p>7 MR. RAWLINGS: Do you have any additional</p> <p>8 questions?</p> <p>9 MR. SUTHAMMANONT: No.</p> <p>10 BY MS. KIM:</p> <p>11 Q. Briefly --</p> <p>12 MR. RAWLINGS: Hold on. Can we ask in a</p> <p>13 real general way -- maybe we can't -- did Everloop</p> <p>14 investors get any money as part of a settlement? Is</p> <p>15 there an answer to that that can be answered?</p> <p>16 MR. LAWRENCE: I think he answered there</p> <p>17 was a liquidation event as part of Everloop --</p> <p>18 THE WITNESS: Listen. If I am not going</p> <p>19 to get in trouble, I will tell you whatever you want</p> <p>20 to know.</p> <p>21 MR. LAWRENCE: They know that. They know</p> <p>22 we are trying to be cooperative.</p> <p>23 MR. RAWLINGS: I will withdraw that</p> <p>24 question.</p> <p>25 We have a few other questions.</p>	<p>1 Q. Sorry. For the record, that is Social</p> <p>2 Media Fund IV?</p> <p>3 A. Yes.</p> <p>4 Q. Were there different offering documents</p> <p>5 for Social Media Fund IV?</p> <p>6 A. There were only three investors, if I am</p> <p>7 correct, in IV. We had -- we closed a very small</p> <p>8 tranche.</p> <p>9 So our plan was to do new docs to reflect</p> <p>10 the price -- actually, I take that back. Yes, there</p> <p>11 were docs. So our original documents stated a price</p> <p>12 not to exceed \$26 per share. We just didn't have the</p> <p>13 Roman -- we have used those docs for Social Media</p> <p>14 Fund IV. We were planning to update those docs until</p> <p>15 Twitter filed their S-1 too early. There were only</p> <p>16 three investors in it. Those three investors at the</p> <p>17 time didn't necessarily care.</p> <p>18 Q. They didn't necessarily --</p> <p>19 A. Care to spend the money to update, to put</p> <p>20 a Roman numeral IV in.</p> <p>21 Q. It seems like there were some issues</p> <p>22 relating to people getting their shares from</p> <p>23 Computershare?</p> <p>24 A. Yes.</p> <p>25 Q. And this was after -- so Twitter went</p>

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<p>1 public in November 2013; is that correct?</p> <p>2 A. They started trading, but we were</p> <p>3 handcuffed, if you will, for 180 days until May -- I</p> <p>4 believe May, May something.</p> <p>5 Q. May, 2014?</p> <p>6 A. Yes.</p> <p>7 Q. Were there issues getting people shares of</p> <p>8 Twitter in May 2014? By people I mean were there</p> <p>9 issues getting the investors of Social Media Fund LP</p> <p>10 shares of Twitter in May 2014?</p> <p>11 A. We told our investors the process will</p> <p>12 take anywhere from 30 to 45 days. The majority of</p> <p>13 our investors got their shares within that time</p> <p>14 period. A handful of investors did experience a</p> <p>15 delay, yes.</p> <p>16 Q. At some point did you transfer the shares</p> <p>17 from Computershare to Fidelity?</p> <p>18 A. Yes.</p> <p>19 Q. And that was from -- I know we discussed</p> <p>20 earlier with the Background Questionnaire -- was that</p> <p>21 Social Media Fund LP account at Computershare?</p> <p>22 A. Yes.</p> <p>23 Q. And then a Social Media Fund LP account at</p> <p>24 Fidelity?</p> <p>25 A. Yes.</p>	<p>1 no problem.</p> <p>2 I went into the Fidelity branch at -- in</p> <p>3 Chicago and said "Here is my statement for</p> <p>4 Computershare. We need to open up a brokerage</p> <p>5 account."</p> <p>6 She said "No problem. Fill out the</p> <p>7 paperwork, send us a copy of the operating agreement</p> <p>8 or partnership agreement, whatever the required</p> <p>9 documentation was.</p> <p>10 So I emailed everything to her, and she</p> <p>11 said "Greg, we have a problem. We have two Canadians</p> <p>12 on your partnership agreement for Social Media Fund."</p> <p>13 So I will take responsibility for that so</p> <p>14 I called John Koeppel at Nixon Peabody and I said --</p> <p>15 MR. LAWRENCE: Attorney-client privilege,</p> <p>16 communication. Not regarding the formation of funds.</p> <p>17 I instruct you not to answer.</p> <p>18 BY MR. RAWLINGS:</p> <p>19 Q. Without getting into what he said or what</p> <p>20 you asked, what did you do next?</p> <p>21 A. We created a new entity removing the</p> <p>22 Canadians from the general partners.</p> <p>23 Q. What was the name of the entity?</p> <p>24 A. The same name. It was Archipel</p> <p>25 Capital-Social Media Fund LP. All we did was, for</p>
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<p>1 Q. So the Social Media Fund LP transferred</p> <p>2 Twitter shares from Computershare to Fidelity?</p> <p>3 A. Yes.</p> <p>4 Q. And were those the shares of investors?</p> <p>5 A. Yes.</p> <p>6 Q. And why were they transferred?</p> <p>7 A. So at this time I had a second run-in</p> <p>8 with Mr. Russo, and Mr. Russo was -- and Mr. Goldberg</p> <p>9 and others -- were impersonating the general partner</p> <p>10 to get access to our Computershare account so the</p> <p>11 head of fraud, Computershare fraud, called me and</p> <p>12 said "We've had 13 people call on this today. I</p> <p>13 don't believe any of them are you. We need to shut</p> <p>14 this account down."</p> <p>15 So the account was placed in fraud. We</p> <p>16 went ahead and removed the remaining shares from</p> <p>17 Computershare, and we opened a brokerage account at</p> <p>18 Fidelity.</p> <p>19 Now I can talk about that ordeal if you</p> <p>20 want.</p> <p>21 Q. What was that ordeal?</p> <p>22 A. In the essence of saving time, not to</p> <p>23 jump a step ahead, we had opened 15 bank accounts</p> <p>24 before as general partners, meaning my partners are</p> <p>25 Canadian; never had a problem. Bank of America, M&amp;T</p>	<p>1 the essence of saving time, removed the two Canadians</p> <p>2 from the general partnership and just have me as the</p> <p>3 sole general partner so we could facilitate the</p> <p>4 transfer of shares.</p> <p>5 Once that was completed and the documents</p> <p>6 were produced to Fidelity, we provided them a letter</p> <p>7 of instruction DTC'ing the transfer to each</p> <p>8 individual's respective brokerage account.</p> <p>9 BY MS. KIM:</p> <p>10 Q. When did the transfer occur?</p> <p>11 A. Which one?</p> <p>12 Q. When did the transfer from Computershare</p> <p>13 to Fidelity occur?</p> <p>14 A. I would say June of 2014.</p> <p>15 Q. How long did that process at Fidelity take</p> <p>16 about, where you were dealing with the Canadian</p> <p>17 partner issue?</p> <p>18 A. I would say probably 10 days. I mean, it</p> <p>19 was pretty quick. To do what we did in ten days?</p> <p>20 Ten days sounds like a long time to our investors,</p> <p>21 but ten days, two weeks. Then it took about three to</p> <p>22 five business days after that for our investors to</p> <p>23 receive their shares.</p> <p>24 One last point I will add in the essence</p> <p>25 of saving time, all our investors had a higher share</p>

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<p>1 price so none of the investors were impacted</p> <p>2 financially for a lower share price than if the</p> <p>3 shares were transferred at an earlier date.</p> <p>4 Q. You mean when the shares were transferred</p> <p>5 in June time frame or late June, it was higher than</p> <p>6 when it --</p> <p>7 A. Could have been transferred.</p> <p>8 Q. Could have been transferred in May?</p> <p>9 A. Yes.</p> <p>10 Q. And then did you after all the shares were</p> <p>11 distributed to the Social Media Fund LP I, II, III and</p> <p>12 IV investors, so the shares were distributed to all</p> <p>13 four funds --</p> <p>14 MS. KIM: Strike that. I apologize.</p> <p>15 Q. During this May, June time frame, were</p> <p>16 Twitter shares distributed to all the investors for</p> <p>17 the four Social Media funds?</p> <p>18 A. Yes.</p> <p>19 Q. Did you distribute after that money back</p> <p>20 to the investors?</p> <p>21 A. There was a cash balance left to</p> <p>22 investors, and it was distributed via pro rata share</p> <p>23 or their ownership they had of the fund, the evidence</p> <p>24 of the K-1 that was prepared by Freed Maxick.</p> <p>25 Q. When you say cash balance left, you mean</p>	<p>1 in 2015?</p> <p>2 A. Yes.</p> <p>3 Q. Could you describe that?</p> <p>4 A. So we are working with a Chinese</p> <p>5 institution to acquire -- so I mentioned earlier we</p> <p>6 have a hard time catering to institutions because our</p> <p>7 supply is limited. We are a small boutique firm. So</p> <p>8 we are looking at creating a relationship. We have</p> <p>9 created a relationship in China with an institution</p> <p>10 who wants to invest a larger sum of money, so</p> <p>11 therefore we need to gather enough supply, if you</p> <p>12 will, in Late Stage Fund I, gather that supply, and</p> <p>13 then depending on intervals of pricing and our</p> <p>14 supply, what we are able to achieve and accomplish,</p> <p>15 then, yes, the Chinese investor may come out and buy</p> <p>16 out Late Stage Fund I and create Late Stage Fund II.</p> <p>17 Does that make sense check? It's getting</p> <p>18 late. Sorry.</p> <p>19 Q. So there exists right now a Late Stage</p> <p>20 Fund I?</p> <p>21 A. Yes.</p> <p>22 Q. I think you mentioned -- I mean, Hane</p> <p>23 showed you that document that said wire transfer</p> <p>24 5 million, and you even said that that constitutes</p> <p>25 shares of a couple of entities. One of them was</p>
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<p>1 the Social Media Fund I, II, III and IV had a cash</p> <p>2 balance left?</p> <p>3 A. I don't recall IV having a cash balance.</p> <p>4 I believe Social Media Fund I was the only fund we</p> <p>5 had that as a cash balance.</p> <p>6 Q. And that was just -- can you explain what</p> <p>7 the cash balance was, what it represented?</p> <p>8 A. So we were at the closing table to</p> <p>9 acquire more Twitter shares, had signed stock</p> <p>10 transfer agreements with the seller, and we were</p> <p>11 getting ready -- say this was a Tuesday -- we were</p> <p>12 getting ready to close on a Friday.</p> <p>13 I am making up the dates, but on</p> <p>14 Wednesday we received notice that Twitter filed their</p> <p>15 S-1. We received the restriction information from</p> <p>16 Goldman Sachs. There weren't any other transfers</p> <p>17 being allowed so that last tranche of shares we were</p> <p>18 set to acquire never closed; hence the reason why we</p> <p>19 had a cash balance in our account.</p> <p>20 BY MR. RAWLINGS:</p> <p>21 Q. Just one last question. With respect</p> <p>22 to -- we saw some document you guys gave us with</p> <p>23 respect to the Late Stage Fund. Is there a potential</p> <p>24 possibility that the Late Stage Fund might be</p> <p>25 purchased by an investor in whole or in parts sometime</p>	<p>1 Spotify, correct?</p> <p>2 A. Yes.</p> <p>3 Q. So that is Late Stage Fund I; is that</p> <p>4 correct?</p> <p>5 A. It is just Late Stage Fund.</p> <p>6 Q. It's Late Stage Fund. Is that entity that</p> <p>7 a potential Chinese investor is potentially</p> <p>8 considering purchasing in whole?</p> <p>9 A. That is one option we are looking at,</p> <p>10 yes.</p> <p>11 Q. One option you are looking at. And then</p> <p>12 the investment would include that and some other Late</p> <p>13 Stage Fund II -- in other words, it would be that plus</p> <p>14 some other investment, correct?</p> <p>15 A. So case in point is we are looking at</p> <p>16 Lyft, for example. Right now we have access to Lyft</p> <p>17 shares at a pre-money valuation of about 1.5 billion,</p> <p>18 what is openly in the marketplace right now with</p> <p>19 either Yahoo, Apple, Google or Alibaba leading this</p> <p>20 round of financing at \$3 billion so my limited</p> <p>21 partners have come to me and said "Listen, if we take</p> <p>22 \$10 million" -- I am making up a money because we</p> <p>23 haven't finalized a number yet -- "of Lyft, do your</p> <p>24 documents allow the opportunity for to us cash out or</p> <p>25 transfer our shares at 3 billion, or two years from</p>

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<p>1 now at 10 billion?" I am just making up numbers.</p> <p>2 Q. Sure.</p> <p>3 A. And the answer is yes. Our documents do</p> <p>4 allow the ability to transfer shares. There is an</p> <p>5 assignment of interest form that was prepared by</p> <p>6 Nixon Peabody that we have used for one death, one</p> <p>7 divorce to transfer shares. Also, the opportunity</p> <p>8 for us to buy out investments for whatever reason</p> <p>9 that we would use in this particular instance.</p> <p>10 So our Chinese investors are looking</p> <p>11 at more -- we have our investors are U.S. -- our</p> <p>12 local U.S. investors, if you will, are looking at a</p> <p>13 way they can invest large sums of money now, not have</p> <p>14 to wait to the IPO or merger acquisition date, but</p> <p>15 realize a higher valuation.</p> <p>16 Our Chinese entity on the other hand is</p> <p>17 more looking at how can we legally get large sums of</p> <p>18 money out, and we have a Chinese investor who is a</p> <p>19 ship builder who as long as he, they, the, the entity</p> <p>20 invests in something surrounding transportation, they</p> <p>21 can move large sums of money out, and that's what</p> <p>22 they are looking to do.</p> <p>23 So that is where the Lyft opportunity --</p> <p>24 Bloom Energy, for example, would be another</p> <p>25 opportunity where we look at our ability to acquire</p>	<p>1 that we should be aware of that are occurring? So</p> <p>2 there is this Chinese investment that is happening,</p> <p>3 right?</p> <p>4 A. I would start before that. I would say</p> <p>5 before we accept any new monies in the partnership,</p> <p>6 we have to have our documents buttoned up, plain and</p> <p>7 simple.</p> <p>8 We are working on finalizing that this</p> <p>9 week with new counsel, one of the two firms that we</p> <p>10 mentioned.</p> <p>11 In addition, prior to us accepting any</p> <p>12 further money, we want to have the fund admin fully</p> <p>13 on board in place so once we have those two</p> <p>14 components in place, the only investments we are</p> <p>15 looking at doing for 2015, continuing investment in</p> <p>16 the Bloom Energy, as they fit our criteria, Spotify</p> <p>17 and Lyft, is what I feel comfortable now saying to</p> <p>18 you.</p> <p>19 Q. And those are Late Stage --</p> <p>20 A. Late Stage Funds.</p> <p>21 Q. So Late Stage Funds and Bloom Energies?</p> <p>22 A. Correct.</p> <p>23 Q. Got it. Okay.</p> <p>24 Let's just take a quick off the record.</p> <p>25 VIDEOGRAPHER: We are now off the record.</p>
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<p>1 shares at \$19. Bloom just raised money at 26.53, and</p> <p>2 the same thing with Lyft where we can invest 1.5</p> <p>3 billion dollars now, and fast forward down the line,</p> <p>4 we can potentially sell to a larger conglomerate at</p> <p>5 \$3 billion.</p> <p>6 Q. Where do you get the access the shares?</p> <p>7 Like Lyft, is that talking to Lyft directly, or is</p> <p>8 that through some broker or some other intermediary?</p> <p>9 A. It is actually both. It started with an</p> <p>10 intermediary. The relationship has evolved, and we</p> <p>11 will be participating in this new pref round of</p> <p>12 financing when the terms come to an agreement.</p> <p>13 I don't think we'll be actively involved</p> <p>14 in the company. It's too big for us, but we will be</p> <p>15 a pref holder in this next round of financing.</p> <p>16 Q. Got it. And so, for instance, Bloom, I</p> <p>17 asked you and you said "I don't know anyone at Bloom."</p> <p>18 When you get shares of Bloom, who do you work with to</p> <p>19 get those shares?</p> <p>20 A. There is a girl at Bloom named Giovanni</p> <p>21 Manca. She is the one that handles everything for</p> <p>22 us.</p> <p>23 Q. And just sort of now that we have you</p> <p>24 here, looking forward, what are the investment things</p> <p>25 that you are planning like in the next three months</p>	<p>1 Time on the video monitor is 5:07 p.m.</p> <p>2 (Pause in the proceedings.)</p> <p>3 VIDEOGRAPHER: We are now on the record.</p> <p>4 The time on the video monitor is 5:10 p.m.</p> <p>5 MS. KIM: We have no further questions at</p> <p>6 this time.</p> <p>7 We may, however, call you again to testify</p> <p>8 in this investigation. Should this be necessary, we</p> <p>9 will contact your counsel.</p> <p>10 Do you wish to clarify anything or add</p> <p>11 anything to the statements you have made today?</p> <p>12 THE WITNESS: Only question I have, so</p> <p>13 regarding the Everloop that we can't talk about, are</p> <p>14 we going to just set up a call?</p> <p>15 MR. LAWRENCE: I will take care of it.</p> <p>16 THE WITNESS: I have nothing else.</p> <p>17 MS. KIM: In terms of clarifying anything</p> <p>18 you said or adding anything to what you said today?</p> <p>19 THE WITNESS: I don't believe so, no.</p> <p>20 MS. KIM: Mr. Lawrence, do you wish to ask</p> <p>21 any clarifying questions?</p> <p>22 MR. LAWRENCE: No, and I appreciate the</p> <p>23 courtesy to allow me to interject a few times. Thank</p> <p>24 you.</p> <p>25 MS. KIM: As a reminder, the investigation</p>

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<p style="text-align: right;">Page 233</p> <p>1 is nonpublic. We request that you do not discuss the</p> <p>2 investigation with anyone except for your counsel.</p> <p>3 We can go off the record.</p> <p>4 VIDEOGRAPHER: We are now off the record</p> <p>5 The time on the video monitor is 5:11 p.m.</p> <p>6 (Time noted: 5:11 p.m.)</p> <p>7</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 235</p> <p>1 UNITED STATES</p> <p>2 SECURITIES AND EXCHANGE COMMISSION</p> <p>3 REPORTER'S CERTIFICATE</p> <p>4</p> <p>5</p> <p>6 I, HELENE GRUBER, reporter, hereby certify</p> <p>7 that the foregoing transcript of 236 pages is a</p> <p>8 complete, true and accurate transcript of the</p> <p>9 testimony indicated, held on February 24, 2015 at</p> <p>10 200 Vesey Street, New York, New York, in the Matter of</p> <p>11 Archipel Capital.</p> <p>12 I further certify that this proceeding</p> <p>13 Was reported by me and that the foregoing</p> <p>14 transcript Was prepared under my direction.</p> <p>15</p> <p>16</p> <p>17</p> <p>18 _____</p> <p>19 Helene Gruber Date</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>
<p style="text-align: right;">Page 234</p> <p>1</p> <p>2 SCOPIST CERTIFICATE</p> <p>3</p> <p>4 I, HELENE GRUBER, hereby certify that</p> <p>5 the foregoing transcript consisting of 236 pages is</p> <p>6 a complete, true and accurate transcript of the</p> <p>7 investigative hearing, held on February 24, 2015 at</p> <p>8 200 Vesey Street, New York, New York, in the matter of</p> <p>9 Archipel Capital.</p> <p>10 I, further certify that this proceeding</p> <p>11 was reported by Helene Gruber and that the</p> <p>12 foregoing transcript has been scoped by me.</p> <p>13</p> <p>14</p> <p>15</p> <p>16 _____</p> <p>17 Helene Gruber Date</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p style="text-align: right;">Page 236</p> <p>1</p> <p>2 PROOFREADER'S CERTIFICATE</p> <p>3</p> <p>4 In the Matter of: Archipel Capital</p> <p>5</p> <p>6 Witness: Gregory Gray, Jr.</p> <p>7 File Number: NY-9143</p> <p>8 Date: February 24, 2015</p> <p>9 Location: 200 Vesey Street</p> <p>10 New York, New York</p> <p>11</p> <p>12 This is to certify that I, Helene</p> <p>13 Gruber, the undersigned, do hereby swear and affirm</p> <p>14 that the attached proceedings before the United</p> <p>15 States Securities and Exchange Commission were held</p> <p>16 according to the record and that this is the</p> <p>17 original, complete, true and accurate transcript</p> <p>18 that has been compared to the reporting or</p> <p>19 recording accomplished at the hearing.</p> <p>20</p> <p>21 _____</p> <p>22 Helene Gruber Date</p> <p>23</p> <p>24</p> <p>25</p>

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